



THE  
FIRE UNDERWRITERS'  
TEXT-BOOK.

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BY

J. GRISWOLD,

AUTHOR OF "A SYSTEM OF CLASSIFICATION OF FIRE HAZARDS AND LOSSES,"  
"THE HAND BOOK OF ADJUSTMENT OF FIRE LOSSES," ETC., ETC.

Second Edition, Revised and Enlarged by the Author.

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# INTRODUCTION

TO THE FIRST EDITION.

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BUT few words will be necessary to introduce the "TEXT-BOOK" to the fraternity of Fire Underwriters, and others interested, and to ask for it a favorable consideration.

The book had its origin in the daily need experienced by the author—in common, doubtless, with all other fire underwriters—for some general work upon the subject of FIRE INSURANCE, wherein might be found gathered in available form its THEORY and PRACTICE, with appropriate laws, rules, and usages deduced from the experience of the forefathers in the profession, which might serve as a beacon to guide the footsteps of the present generation; but, strange as it may seem—while life insurance, a science of comparatively modern origin, abounds in literature, from the canvassing document of a single diminutive folio to the royal octavo tome with hundreds of pages, devoted to the instruction of its votaries, and the elucidation of its principles—fire underwriting, numbering the years of its existence by centuries, and ranking as a science, fails to embrace a single work of the comprehensive general character so urgently needed by the profession; so that what the practical fire underwriter of the present day knows of his business is almost wholly the result of his own observation and of hard-earned experience, unassisted either by theory or the recorded experience of others, beyond a few elementary treatises and digests of the laws of fire insurance, which, unaided by a knowledge of the underlying general principles of the subject, tend rather to mystify than to enlighten. The logical result is apparent in the great diversity of opinion and practice so prevalent, where all should be concordant, uniform and certain.

The present volume is a contribution to fire insurance literature, intended to meet this urgent want—partially, at least.

It has been prepared in the midst of the pressing duties of the profession, and is the result of daily experience, arising from daily needs of the business, during many years of active service in the field and in the office.

In its preparation—holding with Mr. Emerson, that “Every book is a quotation; and every house is a quotation out of all forests and mines and stone-quarries; and every man is a quotation from all his ancestors,” especial effort has been made to seize upon and appropriate the wisdom and opinions of others, wherever found, when pertinent to the subject-matter of the text, rather than to advance and uphold individual opinions, especially upon mooted questions; although no hesitancy has been indulged in combatting opinions when they have been proved erroneous or inequitable. And as it has been seldom necessary to travel widely out of the records of the courts—places of final resort—for the elimination and elucidation of the general principles underlying the fire insurance contract, so but little will be found that is essentially *new* outside of the arrangement and treatment of the several subjects.

The work is intended as a “TEXT-BOOK” for all interested in fire insurance, wherein the *Underwriter* can find the “*general principles*” of the science fully explained, and the legal status of the conditions of the policy as decided by the rulings of the courts.

The *Adjuster* will be furnished with rules for *apportionment* and *contribution* under *specific, compound, average* and other *non-concurrent* forms of the policy, *new in application* in some cases, *but as old in principle as fire insurance itself*, illustrated by a variety of problems of each class worked out in detail, whereby he can untie the Gordian knot of the most complicated cases of non-concurrent policies, and have them stand the test of law afterwards; the *Lawyer*, called upon to plead, or the Court to decide, in cases of disputed liability, will have an opportunity to study the bearings of the case from an *insurance standpoint*—a consummation greatly to be desired, as insurance policies present many peculiarities not found in ordinary business contracts, and but few legal men, who have not made fire underwriting a special study, are sufficiently *au fait*

upon these points to present them lucidly to the comprehension of court and jury ; hence, verdicts are often given and rulings made upon points not really at issue ; and, finally, the *Insured* will be enabled to comprehend his duty in cases of honest loss, and his rights under the policy, should he be so unfortunate as to fall among the Philistines, in the form of "*sharp* or *whack* adjusters."

Acknowledgments are due to those gentlemen who have, by their advice and counsel, materially aided in the preparation of the work. Especial thanks are tendered to the Hon. J. G. Rogers, of Chicago, Judge of the Circuit Court, for valuable time expended upon a critical legal examination of the manuscript ; also to H. K. Lindsey, Esq., of Cincinnati, and R. H. Lawrence, Esq., of Chicago, underwriters and adjusters, for valuable practical suggestions ; and last, but by no means least, to C. C. Hine, Esq., of the *Insurance Monitor*—to whose writings, as far back as 1862, the author is indebted for very many valuable hints and ideas upon the vexed question of compound policies, and whose personal friendship for a series of years has laid him under many obligations.

In the hope that his efforts for the advancement of a profession, in which so many years of his life have been spent, may result to the benefit of his co-laborers in the field,—the younger ones especially,—the TEXT-BOOK is respectfully submitted by

THE AUTHOR.

NEW YORK, Oct., 1872.

# INTRODUCTION

TO THE SECOND EDITION, 1889.

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IN presenting a second, revised edition of the FIRE UNDERWRITERS' TEXT BOOK to the profession, but little is needful to be said of its object beyond what has already been said in the introduction to the first edition of 1872. Since which time, some seventeen years have elapsed, bringing in their flight, in fire underwriting as in other affairs of commerce, some important changes in methods of practice, necessitating corresponding changes in some portions of the work to keep it fully abreast with the progress of the age.

In making such changes, while preserving as far as possible the original order of arrangement of subjects, additions and emendations where needful, have been made from ample notes and memoranda gathered during the interim, thus bringing the work down to the present day.

Amongst other improvements claimed for in the present edition is the citation of numerous authorities, legal and historical, for the several subjects treated upon, by which the TEXT BOOK becomes not only a historical record, but also a *practical* digest of Court adjudications upon the many vexed questions that have been the cause of contention in fire underwriting practice from its earliest days, thus adding largely to the value of the work as a "reference book" for the underwriter, and for members of the bar and bench not familiar with insurance customs and usage.

With these brief preliminary remarks, the second edition of THE FIRE UNDERWRITERS' TEXT BOOK is respectfully dedicated to the underwriting profession at large by

THE AUTHOR.

MONTREAL, P. Q.,  
October, 1889.

## DEFINITIONS.

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**1. ACCORD AND SATISFACTION.**—An agreement that in place of payment of money owing, a certain sum shall be, and is at the time, paid in discharge of the debt. (1976.)

**2. ASSURANCE AND INSURANCE.**—"Tyme out of mynde," these two terms have been used as synonymous. Mr. Babbage thus distinguishes them, viz. :—

"*Assurance* is a contract dependent upon the duration of life, which must either happen or fail."

"*Insurance* is a contract relating to any other uncertain event, which may partly happen or partly fail: thus, in adjusting the price of insurance—

## ERRATA.

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Page 36, § 65, third line of last paragraph, "It is the basis *of*," should read *of*

Page 120, § 293, fifth line from foot of page, for \$12,000,000, read \$12,000,000,000.

Page 244, § 482, "*Rev. Stat. Ohio*," should read *Ontario*.

**AVERAGE.**—See conditions of. (367.)

**3. GENERAL AVERAGE, *marine*.**—Contribution to voluntary sacrifice made, or expenses incurred for the joint benefit of ship, cargo, and freight, and is borne by those interests in common.

**4.** Somewhere about 900 B. C., the city of Rhodes was built, and the "Rhodians" subsequently, for many years, held supremacy upon the seas. From this city emanated what is known in the matter of Marine Average, as the Rhodian law *de jactu*, which remains to the present day unchanged as the basis of the law upon that subject.

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"*Assurance* is a contract dependent upon the duration of life, which must either happen or fail."

"*Insurance* is a contract relating to any other uncertain event, which may partly happen or partly fail; thus, in adjusting the price of *insurance* of houses and ships, regard is always had to the chance of salvage arising from partial destruction."

A writer in the *Assurance Magazine* defines the more correct distinction to be, "that a man *insures* himself or his property, while the office *assures* to him indemnity in case of loss."

Mr. Walford is of the opinion that "assurance" represents the *principle*; "insurance" the *practice*, which would seem to be the same as the case above cited. (26, 111.) See 3 Benn. F. I. Cases, 169.

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The purport of the law is as follows :

"That with the contribution *of all* is to be made good that which is sacrificed *for all* ; for it is fairest that all those bear in common the damage, who, through the sacrifice of other people's goods, have attained that their own goods are saved." (15.)

*General Average* is sometimes used to denote the kind of loss that gives a claim to general average *contribution*—a device for the mutual adjustment of the rights of all parties concerned in a venture—and sometimes denotes such contribution itself. The former is called a *general average loss*, which differs from a *total* loss ; for while there may be many *average losses* during a voyage, there can be but one *total* loss, for that ends the venture.

5. AVERAGE, *particular*, is a partial loss ; usually limited in the policy to a certain percentage upon certain articles liable to damage from slight cause, as three per cent. upon the insured value, *when such loss has been caused by force of the elements without human exertions and not from its own proper vice.* (29.) Its object is to protect the underwriter against trifling and frivolous claims for equivocal damages.

This principle was transferred to fire policies of the early days ; but has long since been dropped from the fire branch, though something similar is still found in railroad policies. (99, 148.)

6. AVERAGE—*petty*.—Small charges formerly assessed upon the cargo ; as pilotage, towage, light-money, beaconage, anchorage, quarantine, fire-money, bridge-toll, etc. Park Ins. 99.

7. *Average Warranty* is liability for "constructive total loss" only, where there can be no contribution ; all is lost, there is nothing to contribute *from* and nothing to contribute *for*, hence the rule of sacrifice for the common benefit is that they are not contributed for where nothing is saved. Crowl's Law Dict'y., A. D. 1607.

8. "*Primage and Average* accustomed," found in bills-of-lading—a small duty paid to the master of the vessel, over and above the freight, for his care and attention to goods entrusted to him.

**9. AVERAGE ADJUSTERS OR STATERS.**—Professional marine adjusters. "Their decisions, resting on mingled law, usage, and equity, are not always uniform and concordant." *Average* adjusting is a distinct profession, such adjuster being usually unconnected with any company. "Lloyds" have their own adjusters. (45.)

**10. CHÔMAGE.**—*Compulsory suspension of work.*—Chômage insurance was first introduced in France some years since, and applied to the insurance of workmen's wages during the time needed for repairs in the event of compulsory stoppage of work by the occurrence of fire. It was subsequently extended, about 1876, to merchants, manufacturers and others, to cover consequential damages arising from the occurrence of fire, not covered by ordinary fire insurance, such as *loss of revenue* from capital, plant or machinery, etc., caused by destruction of the property of the insured, who may thus hold simultaneously a regular fire policy upon buildings, stock or machinery, and another entirely distinct upon the same property, but based upon the productive value of such property, and the average yearly income derived therefrom, upon which interest at a certain rate per cent. (usually six to ten) is guaranteed by the policy from and after the fire, during such time, as from the circumstances attending the loss, the capital invested may remain totally or partially, yet compulsorily, unavailable to the insured, as in rent or lease policies, which represent the principle exactly. There can be no chômage insurance without a corresponding fire insurance upon the property. The amount of chômage insurance is always limited to the existing amount of the fire insurance.

This principle is the foundation of mortgagee insurance, rent and lease policies, policies on profits, income, or commissions unearned, and insurance of production at mills under contracts against failure to fill such contracts, when such failure was caused by fire.

**11. "DECLARE A RISK."**—To make known the contents of a parcel entrusted to a carrier for transportation, in contradistinction to the phrase "contents unknown."

**12. DONATIONS to Fire-Engine Companies.**—"Laying a

tax on the provident members of society to secure the improvident from loss."

**13. FLOCKS**—Literally, tufts of wool. In manufacturing "*shoddy goods*" the waste of wool and other articles ground into "*flocks*," and used with sound material.

When "*Union rags*" are ground for "*flocks*," without oil, it is a dangerous process, on account of the combustible nature of the material. **(18, 25.)**

**14. FLOTSAM**, *Flotsam*: (marine).—A name for goods cast out of a vessel in consequence of stress of weather, or when the ship is sunk or otherwise perished, and the goods *float upon the sea*.

**15. JETTISON**, *Jetsam*: (marine).—The casting-out from a vessel a portion of the lading, in consequence of stress of weather to save the ship. Also the thing so cast out. The term is applied to such things as *sink in the sea*. *Jettison* is of two kinds, regular and irregular: *Regular*, that which is made—not in the very moment of perishing—but rather to ward off approaching danger, where there may be time for consideration; *Irregular*, that made in the very moment of danger, without prior consultation.

**16. LAGAN**.—Goods found floating at such distance from the shore, that it is uncertain what coast they would be carried to, and therefore belonging to the finder.

**17. LIGAN**.—Heavy goods cast out of a vessel and marked by a buoy.

**18. MUNGO**—Milled cloth or *hard ends* only, ground up for use. If made of clean material it will not ignite spontaneously. But if the poorer classes of oil be used, and the rags be not clean, or if mill-waste be mixed therewith as is frequently the case, it is very liable to spontaneous combustion.

A *mungo* machine contains about six hundred teeth, and if in proper working order, to make real good work should revolve nine hundred times per minute. When one of the teeth breaks, or a nail or piece of wire gets into the machine, its velocity throws it out red hot among the flocks, and, if not discovered, will cause the material to ignite. **(13, 25.)**

**19. PLANT.**—The fixtures and tools necessary to carry on any trade or mechanical business.

**20. PROPER VICE.**—Applied to the *inherent* liability or tendency of certain articles to decay, spoil, or deteriorate; as rotting of fruits, souring of beer or wine, spoiling of flour, heating of hemp, hay, rags, etc. (1711.)

**21. PROMPT, PROMPT-DAY.** — Day of settlement of the purchase. *Days of the Prompt.*—Days of courtesy, prior to the day of final settlement for purchases. At public sales, twenty-one days' grace is allowed. (1223.)

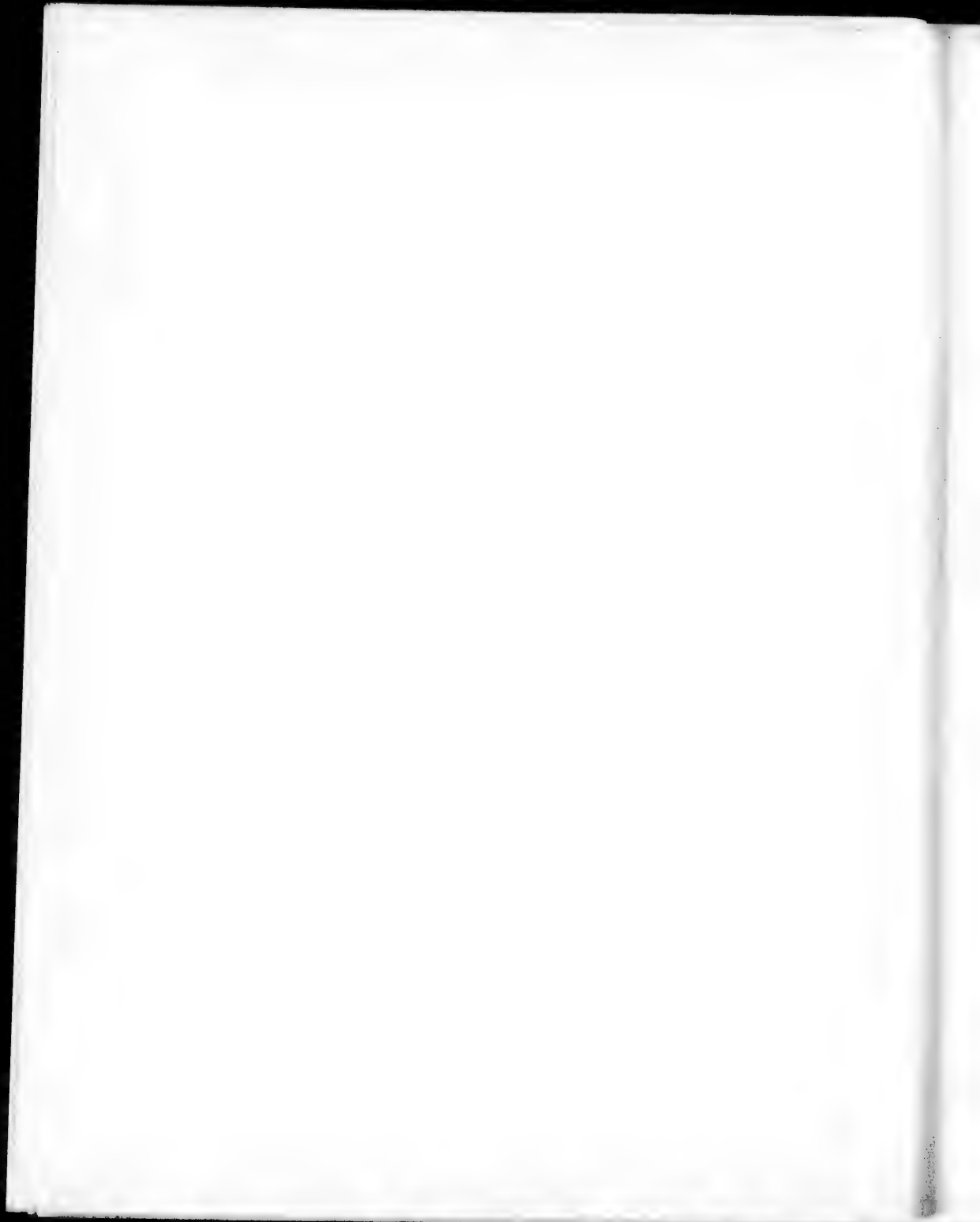
**22. RANGE.**—A certain portion of property under the protection of the policy. A *greater ranged* policy is one covering all that a *lesser ranged* one does, and something additional. A compound policy of Class II. is a *greater ranged* policy than the co-insuring specific policy covering but one item. (423, 2162, 2172, 2173.)

This term is used almost exclusively in England to represent the contributive liability of a policy. Instead of making a float ing policy liable upon the subjects it protects, *it is made liable in proportion to the number of subjects it covers*; and the greater the variety of subjects it protects, or, technically, "the more extended the range," the less liable it is to be called upon to contribute, though the loss may be upon subjects under its protection with others. (423, 2173.)

**23. SALVAGE-LOSS.**—So termed where goods are sold on account of sea-damage, at any place or port short of their destination, if such loss reach a certain agreed percentage of the insured value. (5, 99, 451.)

**24. SPECIE.**—The term *in specie* is applied to a ship which, though much damaged, is still subsisting with a chance of recovery, or, if after disaster it remain a vessel, and as such reach its port of destination afloat.

**25. SHODDY.**—*Soft* woollens, stockings, carpets, blankets, etc., passed through the pickers. (18.)



## INSURANCE.

"*Alter alterius onera portat.*" \*

**26.** *Insurance*, or *Assurance*, as it is indiscriminately termed, in its naked essence, is simply the accumulation of numerous small sums of money, contributed by a large number of persons, to cover such losses as may occur to any one or more of the individual contributors, from the peril insured against, whether of the sea, fire, accident, death, or other *uncertain* event; thus distributing those burdens among the many, that would otherwise fall, with crushing effect perhaps, upon the few. Its underlying principle is *mutuality of interest*, to remedy individual injury by collective reparation; or, as expressed in the motto above quoted—"Bear ye one another's burdens."

Speaking of *Insurance*, Prof. DE MORGAN says:—

"It is, in fact, in a limited sense and a practical method, the agreement of a community to consider the goods of its individual members as common. It is an agreement that those whose fortune it shall be to have more than average success shall resign the overplus in favor of those who have less. And though as yet it has only been applied to the separation of the evils arising from storm, fire, premature death, disease, and old age, yet there is no placing a limit to the extensions which its application might receive, if the public were fully aware of the principles and of the safety with which they may be put in practice. (2 Ins. Law. Jour. 65; May Ins. 2.)

**27.** Technically, there is no *insurance* against loss,—it is not proposed to prevent the occurrence of loss, but simply to *indemnify for such loss*, when it occurs. The insurer has no property in the subject of *insurance*; all interest therein is confined to the *ready money value* of the loss or damage, which is to be made good in the event of the occurrence of a specified contingency. (33.)

**28.** It is thus an *aleatory contract*, "since the consideration which one party receives is not the price of a thing which he gives, but of a risk which he agrees to take upon himself." "*Quæ est simplex assumptio periculi.*" (Emerigon, ch. 1, §. 2; May Ins. 5.) Civil Code l. c. §. 2468.

**29.** *Insurances (fire and marine)* are but simple personal

\* Motto of the seal of the Insurance Department of the State of New York

contracts of indemnity, for definite periods of time, based upon the doctrine of chances; the contingency insured against may happen or it may fail; or it may partly happen or partly fail,—that is, there may be a total loss or a partial loss, or no loss at all, under the contract. Hence it is, that *loss or damage by fire*, considered in the uncertainty of events, forms the subject of insurance. (106.)

**30.** *Life assurance*, unlike the fire branch, is not a contract of indemnity; it is contingent upon the uncertainty of life, and has for its basis the theory of probabilities. The event insured against—death—is inevitable; hence the loss must always be a total one. The chances taken are simply the probability of the proximity or remoteness of such happening. (May Ins. 6, 7, 8.)

**31.** While *insurance* is neither a sale, letting to hire, partnership nor wager, at its outset it was held to be in the nature of a gambling operation—betting on contingencies,—and it was questionable whether, as a principle of morals, it was to be allowed; and there are men whose intellectual abilities have secured a wide reputation, who have felt that the best apology that could be offered for *insurance* was that it was gambling made useful. It has been said of it that

“Insurance is in effect nothing more than a wager; for the underwriter who insures at five per cent. receives five pounds to return one hundred upon the contingency of a certain event; and it is precisely the same in its consequences as if he had betted a wager of ninety-five pounds to five that the ship arrives safe, or that a certain event does or does not happen.” (Christian, 2 Black. Comm. 459 n.)

Justice BULLER said, a century since :—

“Taken in its narrow form, it is only a wager; but, more liberally construed, it is an indemnity.” \*

**32.** In view of the uncertainty of the contingency underwritten, the consideration in the form of premium, to be paid in advance, though very small as compared with the contingent liability assumed, is apportioned as the peril insured against may be deemed more or less uncertain or remote, and the chances for salvage arising from partial losses may be more or less promising. (1532. 1779.)

\* If the party making the *insurance* has no *interest* in the “arrival of the ship,” or “the happening of any certain event,” it would be a *wager*; but if he have such *interest*, it would be an *insurance*. 2 Valin’s Comm. 26. (48, 287.)

**33.** Insurance is defined in "*Le Guidon de la Mer*," A. D. 1578, to be

"A contract by which one promises indemnity for things transported by sea, deducting a price agreed upon between the assured, who makes, or causes to be made, the transport, and the insurer, who takes upon himself the risk, and burdens himself with the event."

EMERIGON thus speaks of the origin of insurance :—

"The contract of insurance arose in maritime commerce, as well from the necessity of things as from the desire which men have always felt to protect themselves against the caprices of fortune. It has a like origin with other contracts, viz., personal interest and the social bond. The law abounds in texts which allow one to disburden himself of the uncertainty of events by throwing it on others." (1017.)

"The contract of insurance is lawful, because the risks with which the insurer is burdened are valued at a price in money." (776.)

To this all things insurable must be brought, for that only is insurable which can be restored, and this "*money value*" is the only thing which will meet the requirements of the case (1693.)

#### WHO MAY INSURE.

**34.** At common law any one may become an insurer; and, when not prohibited by law, private individuals or partnerships may engage in the business. During the Colonial government of this country, as well as for the first fifteen or twenty years after the peace of 1783, the business of (marine) insurance was almost entirely carried on by private individuals, each taking singly, for himself, and not *insolido*, a risk to the amount of his subscriptions; and it is a notable fact that while marine insurance by companies was practically unknown, fire insurance was as seldom undertaken by private individuals, although we find the Amsterdam fire policy of 1744 underwritten by individuals. (63.)

In this country, with few exceptions, the business of marine, fire and life insurance is confined to corporations, either specially chartered or organized under general laws. In England, many of the largest companies are organized as "*Societies*," under "*deeds of settlement*," or articles of association, so termed. The early mutual companies of this country also adopted this form of articles of association, though it is a form of agreement not common in this country, for such purposes at least.

## MARINE INSURANCE.

**35.** When *insurance* was first reduced to practical business purposes is very uncertain. It was first used in marine underwriting, in which branch great antiquity is justly claimed for it. (47.) From the "Chronicle of Flanders," embracing the period from A. D. 621 to 1725, we learn that a "*Chamber of Insurances*" was established in the city of Bruges, A. D. 1310, and that "various laws and forms which the insurers as well as insured were bound to conform to," were enacted for its government.\*

**36.** The *fourth* "Ordinance of Barcelona," a city of Spain, as early as A. D. 1435, refers to previous ordinances, and expressly enacts, not only that the contract shall in *all* cases be executed before, and attested by a public notary, declaring all other insurances wholly void, but it further prohibited insurance by its own citizens beyond *seven-eighths* of their interests, and confined foreigners to *three-quarters*. (**386.**) 1 Magens' Essays, 1, sec. 2; 2 *id. passim*.

**37.** In the year 1598 there was a "*Chamber of Insurance of the City of Amsterdam*," and an "Ordinance of Insurances and Averages," applying to marine underwriting, and evincing a long familiarity with the subject. This ordinance was subsequently amended and amplified, and re-enacted in the years 1673, 1744, 1756, and 1776. In the ordinance of 1744, in addition to a very curious form of marine policy, are to be

\* From Azuni's "*Maritime Law of Europe*" (v. 1, p. 143), we learn that "at the close of the year of Rome 259, there was instituted the 'College of Merchants' (*Loggia della Mercatura*), also called the 'Mercurial (or Movable) College,' either because the meetings were held about the time of the appearance of the planet Mercury, as some believe, or because the Romans regarded that divinity as a protector of Commerce."

This venerable institution was still in existence in the year 1662, and *Seaccia* says that its name had been changed from *Loggia della Mercatura*, its original title, to *Loggia del Cambio*.

These "*Chambers of Insurances*" were common on the European continent under the several names, *la Place*, *la Bourse*, *la Loge*, etc. In 1670, we hear of "*Insurance Street*" in the city of Venice.

found an equally noteworthy form of *fire* policy and a *transport* (inland) policy, copies of which will be found under their respective headings (63, 99, 314).

38. The earliest recorded mention of insurance in England is A. D. 1548, such mention indicating the practice of marine insurance to have been common and well understood at that time. In A. D. 1601, the first insurance law was enacted in England, entitled "An acte concerninge matters of Assurances amongste Merchantes" (45 Eliz., ch. 12), as follows:—

"Whereas it ever hathe bene the policie of this realme by all good means to comforte and encourage the merchante, thereby to advance and increase the generall wealth of the realme, her Majestie's customes, and the Strength of Shippinge, which Consideracion is nowe the more requisite because trade and traffique is not at this present soe open as at other tymes it hath bene. And, whereas it hathe bene *tyme out of mynde* an usage among the merchantes, both of this realme and of forraigne nacyons, when they make any great adventure (especiallie into remote parts), to give some Consideracion of money to other persons (*which commonlie are in no small number*), to have from them assurance made for their goodes, merchandizes, ships and things adventured, or some parts thereof, at such rates and in such sorte as the parties assurers and the parties assured can agree, which course of dealinge is commonlie termed a policie of assurance; by means of which policies if it cometh to passe upon the losse or perishinge of any shippe, there followeth not the undoinge of any man, but the losse lightethe rather easilie upon many than heavilie upon fewe, and rather upon them that adventure not than those that doe adventure; whereby all merchantes, especiallie the younger sorte, are allured to venture most willinglie and freelie."

39. The business was carried on solely by individuals, by means of subscription papers, or agreements, in hands of brokers acting for the applicant, giving the name of the party desiring insurance, the kind of property, and the amount to be insured. The insurers subscribed their names, usually their initials only, *under* the agreement, and were thence called *underwriters*. When the sum upon any risk was greater than any one *underwriter* was willing to carry, others underwrote their names also, until the amount needed was subscribed or underwritten; each becoming personally responsible for such sum or sums as might

be set opposite to their respective names, and not *in solido* as joint partners. When the amount was fully subscribed, the policy was made up or "closed" by the brokers from the agreement, each party signing his name in full in the same order. (44.) When this agreement was made by a company, and entered upon the books and signed by both parties, it was termed a *label* or slip. (1408.)

40. The following is the form of the latter portion of an old English marine policy, showing the manner of subscription by the underwriters, viz.:

"And so we, the assurers, are contented, and do hereby promise and bind ourselves, *each one for his own part*, our heirs, executors, and goods, to the assured, their executors, administrators and assigns, for the true performance of the premises. Confessing ourselves paid the consideration due unto us for this assurance by the assured ———, at and after the rate of ——— per centum.

"In witness whereof we, the assurers, have subscribed our names and sums assured in London."

Name.	Date.	Amount.
—	—	£ —
—	—	—

41. In case of loss, payment was usually made in the order of the names and dates as they stood upon the policy, until the full indemnity was secured; sometimes as many as twenty or thirty names would be underwritten upon one risk.

The liability to pay losses in the order of the date of subscriptions was continued by English companies in their fire policies, each being liable in like order, until the adoption of the contribution clause (1991) introduced proportional abatement instead. And from this source came the custom, so common some years since, and not yet entirely obsolete in this country, by which losses were, under the condition of the policy, made payable without reference to the dates of the different (coinsuring) policies. (1989-1990.)

42. The practice in France is to affix but one date to a policy of insurance received by a notary or broker, and this is written by the hand of the first insurer, immediately after his own

signature; the subsequent underwriters subscribe without affixing any date; the policy is then closed by the notary or broker under date of the first subscription. (115, 1989.)

*Emerigon* (p. 92, Meredith's translation) objects strenuously to this system, and says :—

“In fact each subscription forms a separate contract. The subscribers are not forged into one; and since the truth of the epoch is to rule, according to the case, a crowd of ulterior objects, it is essential that it (the date of subscription) should be known, and it might be so by the means proposed.” (The English rule, 1990.)

In the Antwerp policy of 1563, it is especially “agreed that the last as well as the first underwriters shall take part in the assurance.” So also, with the Amsterdam forms, marine, fire and transport (A. D. 1744), where each underwriter became liable for his pro rata proportions of any partial loss.

## LOMBARDS.

**43.** Early in the thirteenth century, certain Italians from Lombardy—thence styled "*Lombards*,"—then residing in England, in addition to being the great money-lenders of the middle ages, became famous throughout Europe as underwriters; and "*Lombard street, London*," their head-quarters, taking its name from their nationality, became renowned as a landmark in marine insurance, and the only recognized source from which legitimate underwriting could emanate.

It was in their capacity as money lenders that the Lombards were sent by Pope Gregory IX., A. D. 1229, to England, to loan money to convents and communities, or others who were unable to pay down the *tenths* to the church, which were at that time collected with great rigor. The three golden balls, now usually seen over the doors of pawnbrokers' shops, were the arms of these Lombards; they were derisively termed "*The Medici's pills*." These Longobardi—so called from wearing long beards—were in all respects a wonderful people; they are thus described by a contemporary poet:

"Gens astuta, sagax, prudens, industria, solers;  
Provida consilio, legum jurisque perita."<sup>\*</sup>

Mr. M. HOPKINS, in his "*Manual of Marine Insurance*" (p. 153), says of this nation:

"They had united in their own country the patrician order with the vocation of useful commerce; in their hands trade became a glorious as well as a necessary vocation. They sent envoys to the great Khan and to Peking; they built chains of fortresses to protect and give shelter to their merchants and carriers as their trade orientated, passing through regions of desolation, of enemies and of barbarity; they sent to sea a fleet which bore the products not only of Italy, but of the Levant and India, into the Northern seas, leaving them at the doors of

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<sup>\*</sup> "A nation clever, sagacious, prudent, active, adroit;  
Far-seeing in council, learned in the science of law and right."

Britain, France and the Netherlands; they instituted the order of consuls in foreign places; showed the value of money, and the marketable price of its use; and they probably brought to London the ingenious instrument (the insurance policy) which is the subject of this chapter; and in the Merchant's Walk, at Lombard street, signed policies of insurance, which contributed as greatly as any other aid to the enormous after-growth of our maritime commerce."

For a long period the Lombards engrossed the carrying trade with England, and were the first to introduce Bills of Exchange to foreign countries; which were in use as early as A. D. 1394. Their usurious transactions, however, eventually caused their expulsion from England during the reign of Queen Elizabeth. For a history of the Lombards in England, see Fred. Martin's "History of Lloyds and Marine Insurance of Great Britain." London, 1876.

**43a.** Mr. MARSHALL, in his work on Insurance Law (edition of 1802, p. 211), says:—

"It is very probable that the form of a policy of insurance, nearly similar to that which we have now in use, was introduced into England by the Lombards."

All marine policies in use in London, until within a very few years, contained the following evidence of "veneration for the Fathers:"—

"And it is agreed by us, the insurers, that this writing, or policy of assurance, shall be of as much force and effect as the surest writing or policy of insurance heretofore made in Lombard street or in the Royal Exchange, or elsewhere in London."\*

The "Lombards" originated in England that system of private or individual insurance hereinbefore described (**39**), which early in the eighteenth century resulted in the formation of that organization, which has for more than a century enjoyed a world-wide reputation and authority in matters of marine insurance, under the name of "LLOYDS."

\* The Ancona policy, A. D. 1567, provides in Latin that:

"It is also declared to be hereby understood, that upon all matters not expressed in this instrument an observance shall be made of the customs and usages at the Florence Exchange." *Scaccia de Assecur*, 207.

## LLOYDS.

44. The designation "LLOYDS" as applied to a regular organization of underwriters, originated, A. D. 1710, from the fact that these underwriters met regularly at a "coffee-house," kept by one Edward Lloyd, and known as "*Lloyd's Coffee-House*," in Abchurch lane, Lombard street, behind the Royal Exchange, London; which, from its vicinity to the Royal Exchange, early became a popular resort for underwriters, ship-owners, ship and merchandise brokers, and others, for the purpose of obtaining shipping intelligence and the transaction of business connected with marine insurance especially.

The "Lloyds" association afterwards removed to Pope's Head Alley, and subsequently, A. D. 1774, removed to the Royal Exchange, where it remained until A. D. 1838, when the building was destroyed by fire, originating in Lloyd's coffee-house. It was then carried to the old South Sea House, where it continued until the opening of the New Royal Exchange, A. D. 1844, at which time it took possession of its present splendid apartments.

The membership is divided into two classes, viz.:

UNDERWRITING MEMBERS:—Consisting principally of merchants and shipowners, who have paid the customary entrance fees and satisfied the Managing Committee as to their financial standing, to the extent of £5,000 ready money at call.

These underwriters either attend to their own business, or employ authorized agents to underwrite for them. Each representative agent usually acts for several principals, seldom taking risks, however, in excess of £100 for each of his principals upon any one bottom or one policy.

SUBSCRIBING MEMBERS:—These consist of brokers who qualify for entering by suitable introduction and payment of an entrance fee of £12 12s., with an annual subscription of £6 6s. These members show their risks to the various other representatives of the underwriters with a *ship* or label (**1408**), which, if accepted, is duly initialed with the amounts

assumed by each. These "slips" are considered as in honor, and binding upon the subscribers until the duly stamped policy is prepared for signature in place of the slip. No joint liability is assumed; hence no recovery can be had against any one subscriber for more than his individual proportion.

**45.** In the principal room of the association two immense ledgers lie continually open; the one containing notices of "speaking," or ships spoken with at sea, and arrivals of shipping at their several destinations; the other recording disasters at sea. These two books compose what is known as "Lloyds list." The intelligence contained in that "list" is supplied by responsible agents in the employ of the association at almost every port in the world. It was commenced A. D. 1716, and continues to the present day. It is held that information contained in the "lists at Lloyds" is within the knowledge which every underwriter is presumed to possess. (623.) Lloyds have been giving attention to the fire branch of late years, but it would seem without much success. Their policies have been found covering American risks not of the best class and at cut-rates.

Like the Lombards of old, Lloyds is now considered the fountain-head of marine underwriting; and reference is frequently made to its customs; and in the matter of marine adjustments, an agreement is always expressed or implied when the insurance is effected to abide, on both sides, by the "customs of Lloyds." Its adjusters are known as "Lloyds adjusters." (See Fred. Martin's history of Lloyds, *supra*.)

**46.** A number of "Lloyds" are to be found upon the Continent, though many of the associations known as Lloyds are simply steamship companies; and in some of the States of our Union—in Maine two, and New York city one or more.

In this country each subscriber pays a certain sum of money as capital—usually one thousand dollars—which is placed in the hands of an agent who conducts the business as attorney for the parties, on a commission, the subscribers taking no part in the business, except to share the profits.

There is also, in the city of New York, an association styled

"*Individual Underwriters*," doing a marine business only.\* In Boston, Mass., there is an association styled the "New England Association," for the same purpose.

47. From *Leybourn's Panarithmologia*, † published A. D. 1693, we get the following extract giving the practice of marine insurance at that time. He says:—

"Assurance is where you are in any manner of fear of the ship your goods are in, or of the danger of the voyage, or of pirates, etc.; you then are willing to give another man a certain sum of money to put himself in your place, and if any damage arises, to pay you for the same goods the value that you have assured. It is a thing that hath been long in custom and use amongst traders, and was established by law under Claudius Cæsar, before the birth of CHAUS; it hath been much practised in all trading nations, and is a cause of great increase of trade, because the hazard is borne by four or five with mutual consent, which otherwise might fall upon one person. The nature of it is thus: Suppose you ship £300 of goods for Jamaica; you being unwilling to run so great a hazard yourself, you go to the Assurance Office, behind the Royal Exchange, in London, and there acquaint the clerk you will ensure for £200 or £250, or, if you will, the whole £300 (for you may ensure the whole or any part), upon such a ship, for so much goods as you have on board."

\* Within the past few years an *Individual Underwriters Association* for covering fire risks has been in operation in New York city, composed largely of the heaviest dry goods firms in the country.

† The following is the title of this curious book:—  
PANARITHMOLOGIA, being

A	{	Mirror			{	Merchants.
		Breviate				Bankers.
		Treasure		for		Tradesmen.
		Mate				Mechanicks.

And a Sure Guide to Purchasers, Sellers, or Mortgagees of Land, Leases, Annuities, Rents, Pensions, etc., in present Possession or Reversion, and A Constant Concomitant fitted for all Men's Occasions.

Calculated and published by W. LEYBOURN, 1693.

## WAGERING OR GAMING CONTRACTS.

**48.** About the commencement of the eighteenth century, insurance, or, as it was then termed universally, *Assurance*, came to be regarded as a *wager* only, and every conceivable object or pretext was made the subject of insurance; during the famous South Sea Bubble, assurance, degenerated to *wagering*, run wild. We read of companies for insurance against highwaymen, housebreakers, thieves, lying, death by drinking Geneva, insuring female chastity, against divorces, on marriage (office in *Petticoat lane*), infant baptism (these latter two co-operatives). *Little goes*, lotteries, or any public event would do for an insurance (?). Large sums were paid by the underwriters at Lloyds, who speculated upon the failure of a young fellow who had undertaken, for a wager, to go to Lapland, and bring back, within a given time, two reindeers and two Lapland females, which feat he accomplished. (Marsh. Ins., 199; Wesk. Ins., 33; Walf. Hand Book, 25.)

A writer of a few years later says:—

“The making of insurance vastly increased; for gamesters, wagerers, and cunning fellows, who pretend to deal in speculations, began to be almost as much concerned as the merchants, so that a policy of insurance, in a short time, acquired rather the effect of a box of dice than a contract to secure trade; and as gamblers seldom play fair after a few of the first games, it was not long before foul play in assurance began to appear, which has ever since continued to increase insomuch that it is now almost as common to hear of a wilful and fraudulent loss as a inevitable loss at sea.” (1 Magens’ Essays, 36, sec. 29.)

**49.** This state of affairs, and the numerous failures of insurers to pay honest losses, except after heavy abatements, if at all, and the insolvency of some one hundred and fifty of these “underwriters” within a very few years, brought assurance into disrepute, and not only gave rise to the common proverb “*what is it worth to insure the assurers?*” but many of the policyholders did re-insure their insurers by taking *double insurance* (1016); and government interfered by statute (6 Geo. I., c.

18), and restrained somewhat the rule of common law as to the unlimited right any man or body of men had to become insurers, by chartering two companies, "the Royal Exchange" and "the London Assurance," with exclusive privileges in marine underwriting. (60, 61.) (Walf. Hand Book, 27.)

50. *Wagering* policies were speculated in to such a degree, not only in England, but on the Continent, that the legitimate business of insurance became seriously demoralized thereby. In the year 1746, Stat. 19, Geo. II., chap. 37, was enacted prohibiting the issuing of gaming or wagering policies, "*interest or no interest.*" (287.) The celebrated decision of Lord MANSFIELD, A. D. 1778, in the case of gambling policies on the sex of Chev. D'EON, was the first legal ruling making an *insurable interest* the basis of the contract; thus putting an end to wager policies. (2 Magens' Essays, 341.)

By the "Ordinance of Insurances" of the city of Amsterdam *wager* policies were forbidden as early as A. D. 1598.

51. The following is a translation of the civil statute of Genoa in the matter of *wager policies*, as given by the London Assurance Magazine, viz.:

"Securities, bonds, or wagers may not be made without the license of the Senate, upon the life of the Pope, nor upon the life of the Emperor, nor upon the life of kings, cardinals, dukes, princes, bishops, nor upon the life of other lords or persons in constituted dignities, ecclesiastical or secular. Neither may they be made upon the acquisition, loss, or change of lordships, governments, kingdoms, provinces, duchies, cities, lands, or places, nor upon expected famine or war, or the contrary, nor upon the election of governor or magistrates of the republic, and, in fine, upon any transactions having this species or form of a bond, security, or wager." (1 Magens' Essays, 33; 2 *id.* 67, sec. 153.)

## FIRE INSURANCE.

**52.** While the system of marine insurance developed rapidly and continuously, keeping pace with the steadily growing prosperity of the mercantile world, until its progress was limited only by the boundaries of modern commerce, and the advantages of insurance indemnity began to be realized, *fire insurance*, its legitimate though tardy offspring, came slowly and lingeringly into repute as an efficient coadjutor of the property holder in securing adequate indemnity for loss or damage by the ravages of *fire*, no less destructive at times to houses and goods upon the land than were the winds and waves to ships and their cargoes upon the treacherous seas. Merchants so provident as to their ventures, when exposed to the perils of the seas, seemed blindly to ignore the equal chances of destruction to their property when menaced by fire on land; and it was not until the great conflagration of London, A. D. 1666, that the community was rudely awakened to a spasmodic effort to provide security against a recurrence of a similar catastrophe. (vii. *Assur. Mag.*, 213; 3 *Walf. Cycl.*, 438.)

Numerous attempts seem to have been made immediately subsequent to the "great fire" to open *fire offices* in the city of London, all of which resulted in failure until the formation of the "Amicable Contributors," A. D. 1696, some thirty years after. (**58.**) (*Marsh. Ins.*, 681, et seq.)

**53.** Among the early abortive attempts at forming some general system of fire insurance was, as we learn from *Hagden's Dictionary of Dates*, the scheme of a *mutual* insurance office, which ultimately resulted in the formation of the "Amicable Contributors." We also hear of a company "for friendly insurance against fire," at Edinburgh, in 1670, consisting of a number of private contributors, agreeing to insure each other.

**54.** From an article in the *U. S. Gazette* (vol. vii, 1858, p. 125) from the pen of GEO. ADLARD, Esq., a well-known underwriter, and for many years manager of the Queen Insurance Company in the city of New York, we get the following history

of two of the early, if not the earliest, fire companies in England, viz.: "*The Fire Office*," 1680, and the "*Friendly Society*," in 1686, which confined their business to houses only.

Fourteen years after the great fire in London, 1680 (32 Charles II.), a fire insurance company was formed in London under the name of the "*FIRE OFFICE*." It seems to have been a proprietary company. The proprietor, in an appeal to the lords of the Privy Council, A. D. 1687, for protection against opposition from another company, and soliciting the exclusive privilege of "making and registering all assurances, policies, and contracts of *houses* from fire, within the bills of mortality for thirty-one years, they having insured for so long a time," set forth that they, "about six years since (1680), did invent and set up a new undertaking, and an office for the *insuring of houses from fire*, in and about the cities of London and Westminster, and did settle threescore thousand pounds in ground-rents for the paying of losses; and have since paid for such losses twenty thousand pounds."

55. Some six years subsequent to the opening of the "*Fire Office*," another company was organized under the title of "*FRIENDLY SOCIETY FOR INSURING HOUSES FROM FIRE*" evidently upon the mutual plan. (vii. Lond. Assur. Mag., 260; Weskett Ins., 251.)

The starting of this company alarmed the original "*Fire Office*," and the appeal above recited was made, which was heard before the King, James II., in person, several times. On the 16th December, 1687, the King being present, the following action was had in Privy Council, viz.:—

"Whereas, upon the Proposals of Accommodation between Mr. Vincent and Partners, in the Fire Office, and Mr. Spelman and Partner on behalf of the Friendly Society, His Majesty's Council, on the 2nd of December, instant, was pleased to appoint the matter to be argued this day, and both sides attended accordingly. His Majesty in council, having fully considered what was alleged by them, And it appearing to the Board that the way of Ensuring Houses by the Friendly Society is of more benefit and satisfaction to the publick, than by the Fire Office, His Majesty is graciously pleased to declare His pleasure that the said Patents shall be granted to the said Spelman and

Partner, as aforesaid, for carrying on their method of Ensuring Houses from Fire. And His Majesty does hereby likewise order that Mr. Spelman and Partner do present a proposall in writing to this Boord on Friday next, whereby the said Vincent and Partners may be preserved from Ruine."

On the 20th January, 1687, the King being present, the following action was had :--

" The matter in difference between Sir John Parsons, Samuel Vincent, Esq., Dr. Barbone\* and Partners, concerning the Insuring of Houses from Fire—(Fire Office proprietors); and William Hale, and Henry Spelman, Esq., Undertakers for the Friendly Society, being this day heard at the Boord by Councill, learned on both sides, His Majesty was pleased to declare his royall intencions, that he would grant his Letters Patents under the Great Seale, to the said Sir John Parsons, Samuel Vincent, Esq., Dr. Barbone, and Partners, for continuing the Insuring of Houses according to their undertaking; and did order, and it is hereby ordered accordingly, that one of His Majesty's Principall Secretaries of State, do cause a Warrant to be prepared for His Majesty's Royall Signature, directing Mr. Attorney or Mr. Solicitor Generale to prepare a bill to passe the Great Seale, authorizing and empowering the said Sir John Parsons, Samuel Vincent, Esq., Dr. Barbone, and Partners to continue and proceed in their method of Insuring Houses, with a clause prohibiting the undertakers for the Friendly Society, and all others, from insuring any houses for one year after the date of the said Letters Patents. And His Majesty did further declare his intentions and pleasure to bee, that after the expiration of the said terme of one yeare, the said undertakers for the Friendly Society being likewise authorized by his Letters Patents, may proceed in their method of Insuring Houses in the manner following, viz. : for the space of three moneths, and then to desist for the next three moneths, and then to begin againe for three moneths more, so as to put a stop from time to time to the said method of Insurance of the said Friendly Society every other three moneths: And a clause is likewise to be inserted in the said Letters Patents, reserving power to His Majesty to appoint such allowance or reward to be paid on every occasion of Fire by the said Sir John Parsons, Samuel Vincent, Dr. Barbone, and Partners, as His Majesty shall thinke fit, to the Gunners and others belonging to the Office of the Ordnance, who shall, from time to time, assist in Extinguishing of such Fires."

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\* A lineal descendant of the " Barebones " of Cromwell's time.

**56.** On the 10th February, 1687, the King being present in Council, "upon the Petition of Thomas Silver and Thomas Dodge, His Majesty's Gunners, in behalf of themselves and others, for an allowance to be made them by the Ensurers of Houses from Fire, towards the charge, hazard, and paines in blowing up of houses, and otherwise Extinguishing of Fires. It is ordered by His Majesty in Council, that in regard to the Petitioners and the Gunners under them, are belonging to and under the immediate direction of the Master and Officers of the Ordnance, who are the best able to judge of the merits of their respective services. That the sume of sixty pounds per annum be reserved upon each Patent that shall be granted to any Ensurers of Houses from Fires, to be paid quarterly into the Treasury of His Majesty's Ordnance, and from time to time distributed by the Master of the Ordnance for the time being, according to the respective services, merits, hazards, and accidents of the persons employed therein.\* Whereof His Majesty's Attorney and Solicitor Generale are to take notice and see the same done accordingly."

**57.** In the month of September, 1681, it was agreed by the Common Council of London that books should be opened for receiving and entering subscriptions; and that lands and ground rents to the value of £100,000 should be settled as a fund to insure such houses as should be subscribed for; *the premium to be £4 per cent. for brick houses, and £8 per cent. for timber houses!!* By a resolution of the Council in November, 1682, the court decided to relinquish the business and return the money to the subscribers. (Walf. Hand Book, 44.)

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\* It would thus seem that underwriters of those early days enjoyed a privilege common to those of the present, and for similar purposes—that is the right to be heavily taxed for the benefit of non-insurers.

## HAND-IN-HAND INSURANCE SOCIETY.

**58.** The *first* regularly organized *fire* insurance company was founded A. D. 1696, in London, under the designation of "CONTRIBUTORS FOR INSURING Houses, Chambers, or Rooms, principally fire, by Amicable Contribution," and called the "AMICABLE CONTRIBUTORS;" better known, however, afterwards as the "AMICABLE CONTRIBUTIONSHIP for the assurance of houses and goods from fire." The name of the Society was changed in 1698, to the "HAND-IN-HAND," by which it is known to the present day, being the *oldest* existing *fire* insurance company in the world.

The principles upon which the Society was organized were somewhat peculiar, and form the basis of some of the early judicial insurance decisions. They differ materially from the policy of the Society in its modern form. (397.) They were as follows, viz. :—

"I. The policy was for seven years, and covered houses only.

"II. The premium for the first year was a rate for that year, and at the same time a *deposit* that furnished the rate for the remainder of the term. At the expiration of the policy the deposit was returned to the insured, with a pro rata share of earned profits.

"III. All risks were assumed without the exceptional clause, as to enemies, military or usurped power, rebellion, civil commotion, riot, etc., which was subsequently introduced into their policy. (1674.)

"IV. The property was protected during the term of the policy *against any number of losses, not total*, without reducing the amount insured on the premises or impairing the deposit. (885.) In case of total destruction, the company had the option to pay the whole sum insured, and thus terminate the policy, *or rebuild* (to begin within *six days* after the fire happens), *the policy continuing in force*; and how often soever the destruction of the building by fire and the rebuilding might occur, during the term of the insurance the policy remained in force. Here we find the germ of *perpetual insurance* (241), and get some light upon the decisions of the courts upon *successive losses*. (1858.)

"V. The payment of the deposit, the acceptance of the policy, and signing the articles of association made the insured a member of the Society.

"VI. The day of issuing and the day of termination of the policy were

both included in the duration of the insurance, which illuminates the decisions of the English courts upon this subject. (848.)

"VII. All assignments were to be noted to the Society and endorsed upon the policy within *twenty-one days*, subsequently changed to *ninety days*.

"VIII. The business was conducted for the profit and loss of the 'contributors;' and upon the termination of the policy, the insured received the deposit and his proportion of the profits."

MR. HORACE BINNEY, in a centennial address before the contributors of the Philadelphia Contributionship Association, says of this Society, its progenitor:—

"Upon what facts it established its first rates I have been unable to find. *If it had any, it had more than some of us now have in this city* (1852). It had no capital, as far as I can learn, nor any security for its losses except its own premiums; but as it was a company for *mutual assurance* only, the insurers and the insured being embarked in one bottom, it was as safe a mode as could be devised of beginning an experiment. It planted the seed from which the now marvelous tree has grown up in England and elsewhere."

Among the early fire offices, still in existence, are the following:

59. The "SUN FIRE OFFICE," established in London, April, 1710, upon the joint-stock plan. The origin of this company is somewhat quaintly described in the report of an early insurance case, A. D. 1729, as follows:—

"About the year 1709, some persons observing the great benefit accrued to the public by insurances made in the cities of London and Westminster against losses on *houses* by fire, but that such insurances did not extend to other parts of England, nor *were there any insurances against losses of goods by fire*, they formed a society for *that* purpose, which was called the Sun Fire Office."

This was thus the first still existing *fire* company that covered movables; and, appreciating the dangers attending such an undertaking, it prepared to meet them by the adoption of precautionary "proposals," or conditions under which such insurances would be made, all of which I have descended to the present day, either in the same identical form or but slightly modified to meet the changes of time and circumstance. (107.) (Walf. Hand Book, 25.)

From its business embracing a wider scope than any of the preceding companies, it soon became a leading office, and played an active part in the early history of fire insurance in England, and at this time is among the most wealthy institutions of that kingdom.

**59a.** The next in date, A. D. 1714, was the "UNION FIRE OFFICE," or "*Double Hand in-Hand*," in London, where it is still flourishing.

**59b.** In the year 1717, another society, styled the "WESTMINSTER," was started upon the same principles as the Hand-in-Hand, confining its business entirely to houses. Up to the year 1880, the management of this society had remained for 160 years in one family, descending from father to son.

**60.** On June 22, 1720, 6 Geo. I.—"The ROYAL EXCHANGE ASSURANCE for insuring shipping and goods at Sea or going to Sea," and the "LONDON ASSURANCE," for the same purpose, were chartered; for which charter £300,000 were to be paid into the royal treasury.

By supplemental charters (1721) the first-named was authorized to insure lives and against fire losses. (**395.**) The second "to insure houses and goods from fire." (Walf. Hand B.k., 28, 33.

These two companies are still in existence, and are the oldest *marine* insurance offices in the world. By their charters they had exclusive privileges in *marine* underwriting as against all other companies or associations, but not against individual underwriters, until A. D. 1824.

**61.** MR. PARKS, referring to these offices, A. D. 1788, says:—

"The legislature having thus anxiously provided for the security of those merchants, who might be desirous of carrying on an extensive trade, but who were deterred from doing so through fear of the insolvency of underwriter, having stipulated with the company that they should have sufficient funds for the payment of all demands that might be made, and at the same time allowing to *private* underwriters the full liberty of insuring to any amount with those who were satisfied to trust to their private securities only, it is not to be wondered at that the business of insurance increased to a degree almost inconceivable. Indeed, any person, since this statute, may insure as at the common law, with this single exception, that any policy subscribed by a private firm or partnership is absolutely void."

**62.** MAGENS, in his *Essays on Insurance*, (VOL. I., p. 31) A. D. 1755, says:

"In London insurances from fire are obtainable at such easy rates, that there are few merchants but choose to be insured for their own quiet; besides, this precaution adds to their credit, both at home and abroad, when it is known that their great capitals lying in their houses and warehouses are thus secured from the flames."

Thus presenting a marked contrast with the previous century, when fire insurance was almost unknown. Since the period of which MAGENS wrote, fire insurance, in the extent of its transactions, has, in England, quite exceeded its prototype, marine insurance; and from these beginnings England has come to be the great insuring nation of Christendom. Its companies are represented in every quarter of the globe, and their policies are indited in every written language.

### CONTINENTAL FIRE POLICY.

**63.** In the "Ordinance of Insurances and Averages" of the city of Amsterdam, A. D. 1744, we find a form of fire policy differing materially from that of the English company,—and, for that matter, from all other *fire* policies, "*thought of or not thought of*,"—except in one solitary instance, in this country at least, that of what was, in 1793, known as the *Hartford Fire Insurance Company*, of which this was evidently the progenitor. (**87, 99.**)

The form of the policy is as follows, viz. :—

#### AMSTERDAM FIRE POLICY, 1744.

"We, the underwritten, do insure you ———, or whom else it may concern, wholly or partly, friend or foe, viz. : Each for the sum here by us underwritten, on the structure, building, etc., called the ———, standing and situated ———, with the house and utensils; moreover, the household furniture, goods, wares, and merchandises, of whatsoever quality or nature they may be, none excepted, as already are in or on the aforesaid ———, or during the whole space of this insurance, shall be brought therein (and the insured shall be at liberty, at any time, to house so many goods, and to deliver them out again, as he shall please) against fire and all danger of fire; moreover, against all damage which, on account of fire, may happen either by tempest, fire, wind, own fire, negligence and fault of own servants, or of neighbors, whether those nearest or further off; all external accidents and misfortunes, thought of and not thought of, in what manner soever the damage by fire might happen; for the space of twelve months, commencing with the ———, and ending the ———, both at twelve of the clock at noon; valuing specially and voluntarily the said structure,

building, house, etc., with all its utensils and household furniture, at the sum of ———, and the goods, wares, and merchandises at the sum of ———, and thus together at the sum of ———, and it shall not prejudice whether all this be worth, or has cost, more or less. And the insured, or whom else it may concern, in case of damage or hurt, shall need to give no proof nor account of the value, as we know it is impossible to be done; but the producing of this policy shall suffice. And in case it should happen that the said structure, building, house, utensils, and household furniture, and the goods, wares, and merchandises, the whole or part, are burnt or suffer damage on that account, we do hereby promise punctually to pay and satisfy, without any exception, within the space of three months after the fire shall have happened, due notice having been given to us, each his whole sum underwritten, or else in proportion to the damages suffered, without deduction. Provided that, in case of a partial loss, all that shall be found to be saved and preserved shall be deducted, after the deduction of the charges paid for saving and preserving, and concerning which the insured shall be believed on his oath, without our alleging anything against it, provided there be paid to us, in ready cash, for the consideration of this insurance——— *per hundred*, under obligation and submission of our persons and goods, present and to come, renouncing, as persons of honor, all cavils and exceptions contrary to these presents; reciprocally submitting all differences, as well concerning the damages as premiums, to the decision of the Chamber of Insurance and Averages in this city; and choosing, in case of our dwelling without the jurisdiction of the said city, the *Domicilium citandi et excoentandi*, the habitation of the Secretary of said Chamber for the time being. Done at Amsterdam, etc."

## REMARKS.

64. This policy was issued by individual underwriters, each becoming liable only to the extent of his own subscription, though, in case of partial loss, each paid his pro-rata, which differs from English practice at that date, when payments were made in the order of subscription, the prior ones being exhausted before the subsequent could be called upon to pay anything.

It was a general policy, covering building and household goods in one sum, and goods, wares, and merchandise in another, in the same building—the honest burghers usually living in the same houses wherein they had their stores.

The risk commenced and terminated at "twelve o'clock at noon" on the respective days, a stipulation not generally found in the English policies of that date, or in the early American policies. (847.)

It was a "valued policy" of the loosest kind, as the policy was not prejudiced "*whether all this be worth, or has cost, more or less.*" No proofs of value or of loss, beyond the presenting of the policy, and the assured's oath as to the salvage, were required.

Losses were paid in ninety days, including the cost of saving the property, each underwriter being liable in *person* and in goods for his proportion. In fact, it was one of the "*speculative*" contracts so rife at that period.

The only reservation in favor of the underwriters seems to have been, that they should have their *per cent.* premium; and it should have been a round one, for anything more promotive of fraud could scarcely be conceived. Such a policy, in these days, would not be likely to conduce to heavy dividends to underwriters of the present day.

65. MAGENS, writing in 1755, says: "At Hamburg there is 'FIRE CASSA' of long standing, wherein the principal houses are insured at the value of fifteen thousand marks (about £1,000), to be paid in case of their being burnt."

*Fire cassa* was a sort of municipal fund, raised by common assessment of all the house property of a city or town, to provide a fund for general protection. It is the basis or the system of governmental insurance. If any individuals failed to contribute their quota, according to the value of their property, the pro-rata principle would be applied in case of loss. (71.)

#### FIRE INSURANCE IN FRANCE.

From the very interesting work of Mons. V. Senés, entitled "Les Questions d'Assurances de 1878 à 1881," Paris, 1881, we get the following *résumé* of early insurance offices in France.

66. By an edict of Louis XIV., bearing date May 31, 1686, the first *marine* insurance company was established in France, no name given, with a capital of 300,000 livres, and a monopoly of all marine business done in the city of Paris. To make the

undertaking popular among the gentry of the period, the King declared that "those who became members of this company should not thereby be held to derogate from their nobility." The limit of the company's existence was but six years, but according to Valin (Commentary, vol. 2, p. 26)\* it lasted but a short time, referring to which fact he speaks of another company formed under an act of association on Jan. 29, 1750, under the name of "*Chambre Royale d'Assurances*," which did not confine itself to marine business only, but covered upon houses against loss by fire as well; the subscribed capital was four million livres; subsequently raised to twelve millions, but in 1754 reduced to nine millions. This company, like all other financial institutions, perished in the revolutionary tumult of 1787.

On Nov. 6, 1786, a new company was organized in Paris, under the name of "*Compagnie d'Assurances contre les Incendies*," with guarantee capital of eight million livres. One-fourth of the profits were surrendered by the company "for the support of a corps of firemen," or for any other purpose. In the year following this company became "*La Compagnie Royale d'Assurances*," with life powers, and perished as above recited.

It was not until A. D. 1818 (Walford says 1816) that the first regular stock, or proprietary fire insurance office: "*La Mutuelle de Paris pour les Incendies*," was organized in Paris; followed 1819 by a second proprietary fire office, called "*La Compagnie d'Assurances Générales*," and "*Le Phoenix*," another proprietary fire office, in the same year.

**67.** French companies are now of two kinds—*Stock*, or proprietary, and *Mutual*, viz. —

**STOCK COMPANIES.**—*Sociétés anonymes d'assurances à primes*," those having fixed premiums, equivalent to stock companies, with a capital duly subscribed in shares, on which not less than 50,000 francs shall be paid in. Twenty per cent. of the net profit must be reserved until the reserve fund

\* "They say marine insurance, because there can be no question but of that, and not of that which is made for inland travel, or for securing owners of houses from the dangers of fire and other accidents as is practised in England; and as is proposed to be done by the insurance company recently established in Paris, according to its rules, March 29, 1754. There are similar insurance companies in the Dutchy of Luneburg, Zell, Bremen and Verden" (*Journal Historique*, Mar., 1756, page 217.)

shall reach one-fifth of the capital. All surplus funds must be invested in *immovables*; as, ground-rents, railway shares, having interest guaranteed by the State, etc.

**68.** MUTUAL INSURANCE ASSOCIATIONS.—*Sociétés d'Assurances Mutuelles* may be formed by an authenticated (notarial) deed, or by a deed under private signature, made in duplicate, without any limitation as to numbers.

There were —A. D. 1881, when Mr. Senés wrote—thirty fire, sixteen life, five accident, one hail, one live stock, and thirty-one marine insurance offices located in the city of Paris, with an aggregate subscribed capital of 386,000,000 francs, in round numbers, together with seven inland and eighteen marine offices in the provinces, having only some 42,000,000 francs, the marine offices having but a moiety of this amount.

**69.** The first French stock company was "LA MUTUELLE DE PARIS pour les immeubles" ("Paris Mutual Insurance of *Immovable* property"—that is, houses), which was organized A. D. 1816. The second was a proprietary company, organized A. D. 1819, called "*La Compagnie d'Assurances Générales*."

The "*Phoenix*" was organized the same year, as a proprietary company. Up to the year 1881, there were in France *thirteen* proprietary and *forty-one* mutual companies. The business was divided into *movable*, *immovable*, and *general*. Of the *forty-one* mutuals, *nineteen* insured only *immovable property*, as houses; *four* insured *movable* property, as household goods, merchandise, etc., and *eighteen* insured *both*, or *generally*.

#### GOVERNMENTAL INSURANCE.

**70.** In BAVARIA, SAXONY, WURTEMBERG, GRAND DUCHY OF BADEN, PRUSSIA, as well as SWITZERLAND, fire insurance, of dwellings, especially, is in the hands of government, through the agency of a "*fire insurance department*," and every building is insured as soon as completed. The insurance is upon the mutual fire-cassa (**65**) principle, and is confined to each State. Each insurer is assessed his pro-rata for any loss within the State; such pro-rata being based upon the appraised valuation of his own house. In case of loss, no money is returned; the damage is repaired or the building rebuilt by the government; hence there is no incentive to or room for incendiarism or over-insurance.

No building can be erected until the plans have been submitted to, and approved by the proper governmental authority. When completed, it is examined and valued by government appraisers, and entered upon the books of the "Fire Insurance Department," at such appraised value, which forms the basis of future assessments for losses. At the end of each year the "*Insurance tax*" is assessed pro-rata upon the amount of losses of the preceding year, and collected as other taxes. (2176.)

Rigid surveillance is kept up as to lights and fires, by periodical inspection of stoves, fire-places, lamps, etc., by "*fire-wardens*," and even the kinds of lamps and match-safes to be used are prescribed.

Private fire insurance companies in these States, as a general rule, do not cover upon dwellings—these are monopolized by government. Their business is mostly confined to *personal* property. They are under strict governmental supervision.

In referring to "governmental fire insurance," and its success, in *Saxony* especially, we learn that—

"By law, all buildings which are not classed as extra-hazardous *must* be insured with the government company. But the flames keep ahead of the rates, and the government institution has now (1870) a deficit of more than a million thalers. This State office is, in reality, a public charitable establishment, under the regulations of which the large and well-regulated cities, adequately supplied with improved fire departments, cover the losses of the ill-constructed small towns and villages, destitute of a fire department, and without any engines except those of very ancient description."

Within a generation, in one of the provinces of Saxony, *fifteen* cities were destroyed by fire, and a very large number of small cities throughout the kingdom had been seriously damaged. To those like *Leipsic* and *Dresden* were compelled very disproportionately to contribute, much to their disgust.

From these facts, it would seem that Saxony well deserves the name of "*the fire land*," which has been applied to it.

71. Belgium, Denmark, Sweden, and Italy also have their fire insurance companies, operating upon the same general principles as other proprietary companies on the Continent; and even the "*Celestials*" of China have become fire underwriters, abroad as well as at home, though mostly operated under

English auspices. The "*Yang-Tze Insurance Association*," of Shanghai, has had an agency in San Francisco, Cal., since A. D. 1866. Cash assets then \$1,227,941.

#### FIRE INSURANCE IN GERMANY.

**72.** The first public insurance institution in Germany was founded A. D. 1667, in the city of Hamburg, under control of the municipal authorities, as described in sec. (70), *supra*. At the close of 1887 there were thirty-six of such *fire-cassa* in the German Empire.

The first joint stock office was founded in 1812, the *Berlinische Feuer Versicherungs Gesellschaft*; while, at the present time, there are in existence some 30 joint stock offices; 11 mutuals, and 233 small guilds or clubs. Many British, Belgian, Swiss, and other nationalities, have agencies throughout the cities of the German Empire; while in turn, some of the larger German offices have agencies established in the Continental cities, England and America. For forms of German policies, see (429, 432.)

The proposal, or application, forms the basis of all insurances in the German Empire; and with few exceptions, every proposal must pass through the hands of the police and be registered, with a view to the prevention of fraud, over-valuation, etc.; the issuing of a policy, before the police has certified the proposal, is punishable by a fine varying from about \$4 to \$30. In addition to the premium and the stamp-duty, the insured pays the following charges: policy fee 50 cts.; renewal of policy fee, 25 cts.; endorsements, each, 12½ cts., and for house-plates, 12½ cents. Some companies make it a condition of their policies that a house-plate *must* be put up conspicuously, particularly on agricultural risks. Policies covering amounts less than about \$40 are exempt from stamp-duty; those in excess of that sum, and up to about \$80 and over, pay one-half per cent. Where policies are written for five years, four premiums only are required; if written for ten years, a discount of two annual premiums and ten per cent. is allowed.

As a rule, insurance upon the same risk by more than one office is not permitted, though in some of the States the law does

not prevent it, if the police is made aware of all of the insurance; hence the means of reinsuring heavy excess lines are absolutely necessary. To this end some of the larger offices have one or more re-insuring offices, formed among its own stockholders, and bearing its name; and there are several independent, purely re-insuring companies in the Empire, while treaties or agreements are made with foreign branches to carry a share of all surplus lines, for which a commission, varying from 20 to 27½ per cent., is paid to the original office.

#### FIRE INSURANCE IN RUSSIA.

**73.** The FIRST RUSSIAN INSURANCE COMPANY was chartered in 1827; the *Russian* in 1868, the *Russian Re-insurance* in 1869, and the *Commercial* in 1870. Besides the native companies, there are many English and Continental agencies in the Empire. The business heretofore done by the native companies has been very large, and thus far very profitable to the stockholders. The plan of each company taking *all* of any risk offered, regardless of amount, and re-insuring excess lines with other companies, is common there, as in Germany. Offices of other countries transact but little business outside of re-insurance of surplus lines of local companies; and judging from reports, the results have been found anything but satisfactory. The Imperial Government makes it a point to foster and protect its home companies by legal restrictions upon foreign offices, each of which is compelled to make a deposit of 500,000 roubles (\$380,000) before it can do any business. In 1847 insurance in foreign countries upon property in Russia was forbidden by law.

#### FIRE INSURANCE IN AUSTRIA.

**74.** In 1850 there were *four* proprietary fire, and *five* mutual fire insurance companies in the Empire. The first proprietary office was founded in 1822, and the last, up to the date above named, was in 1838. The *mutual* companies are apportioned to the several provinces, each embracing two or more. The first was founded in 1825. The *mutuals* cover buildings only. The proprietary or stock offices cover upon merchandise

and personal property generally. They also undertake marine and transport risks.

#### FIRE INSURANCE IN SPAIN.

**75.** Spain promulgated a law in 1869 for the free establishment of banks and companies, which are not to be subject to the inspection or control of government. All questions as to the rights and duties of the co-partners will be exclusively under the jurisdiction of the tribunals. From the old text writers we learn that "*Las Capítulos de Barcelona*," was the first of the many "Ordonnances" of the Continental States, in which insurance is treated upon. The first naval ordinance of that city bears date 1158. Capmany, in his version of the *Consolato*, speaks of four of these ordinances from 1435 to 1484, as found in the original Catalan dialect, in the records of the city of Barcelona, that of 1435 being still extant, and referring to previous ordinances. (1 Azuni 251-4; 1 Duer. Ins. 36, 45; 2 Val. Comm. 260; Emerigon, xxxix). Notwithstanding this early progress in the marine branch, the progress of the fire branch is slow, the larger proportion of the business being in the hands of foreign companies.

#### INSURANCE IN AMERICA.

**76.** The earliest notice of the practice of insurance upon this continent is found in the *Historical Magazine* for 1858, which gives the *first Insurance Office* as having been established in Boston, A. D. 1724. It was an *agency* or brokers' office, conducted by Joseph Marion, at that time. He subsequently, 1728, started the "*Sun Fire office*," but it was short-lived. In *Shepley's* "History of the origin of the Marine Policy," embracing also the early history of insurance in the "*Providence Plantations*," is to be found a *fac-simile* of an old marine policy, issued at Boston under date of June 4, 1745, numbered 1,155, and subscribed by five merchants of that city, but covering upon a Providence vessel. The number indicates that the broker issuing the policy must have been in the business for some time, not unlikely this same Marion.

A certain *John Kopson*, "at his house in the High street," Philadelphia, through the columns of the *Pennsylvania Mercury*, May 25, 1721, offered himself as a *marine insurer* to obviate the necessity of "sending to London for such assurance," which, as he said, "was not only tedious and troublesome, but very precarious." The merchants of that city, however, continued to send to London for the bulk of their insurances, until the organization of the "Insurance Company of North America" and the "Insurance Company of the State of Pennsylvania," A. D. 1794, which did the most of the marine business of the country for many subsequent years. (87. 88.) See *Fowlers History of Insurance, passim*.

77. The whole system of insurance, as at first practiced in America, seems to have been modeled after the English methods, with such modifications and alterations as the necessities of a new country would naturally require. We find but one instance of the use of the Continental form of fire policy in this country, and that was the Amsterdam form of 1744, by a company in the city of Hartford, A. D. 1793-4. (99.)

The close political ties and business relation then existing between England and America had a strong influence doubtless in transplanting, among other customs, habits, and institutions, those of underwriting; and, as frequently occurs in cases of transplanting, the quality of the article has evidently much improved, either by better culture or more congeniality of soil; or, in other words, by freedom from the trammels of tradition and an undue veneration for the "Fathers," so prevalent in the mother country, by which the underwriters here were left free to adopt or reject what may seem to them pertinent and desirable or otherwise.

#### EARLY PENNSYLVANIA COMPANIES.

78. "THE PHILADELPHIA CONTRIBUTIONSHIP FOR THE INSURANCE OF HOUSES FROM LOSS BY FIRE," the oldest existing insurance company in this country was organized under a "deed of settlement," April 13, A. D. 1752, modeled upon the plan of the English "*Amicable Contributionship*," even to its name, deed of settlement, and seal or badge—four hands united—

from which, like its prototype, it is frequently called the "*Hand-in-Hand*." (58.) It is still in prosperous existence devoting its attention entirely to perpetual insurance upon brick or stone houses, ground rents, etc.

79. At the centennial meeting of the contributors, April 12, 1852, *Horace Binney*, Esq., the orator of the occasion, said :

"We began, a hundred years ago, with nothing but a good thought, a seed which when it was sown was no bigger than a grain of mustard-seed, 'less than all the seeds that be in the earth ;' and at this day how many lodge in security under the shadow of the tree that has sprung up from it ! A century ago, not an inhabitant of this city possessed a dollar of indemnity against loss of his dwelling by fire. To-day this company insures eight millions of property in brick and stone buildings, and holds seven hundred thousand dollars of effective, well-secured funds to indemnify the loss that may happen to them by fire."

80. The original principles of the company, as we learn from the same source, were the following, almost identical with those of the *Amicable Contributors* of London :—

"I.—The policy of insurance was for seven years. (It was subsequently made perpetual, with liberty to determine it on either side.)

"II.—The premium was neither a rate payable annually, nor for the entire term of seven years, but was the deposit of a sum, the use or interest of which during the policy belonged to the company. (This was subsequently changed so that no part of the *deposits* could be used in payment of losses until the *interest* money had been exhausted.)

"III.—The risk of all fires was assumed without any exception of public enemies, military or usurped power, rebellion, civil commotion, or riot. (As in its prototype.)

"IV.—The property insured was protected during the term against any number of losses *not total*, without reducing the amount insured on the premises, or impairing the deposit. In case of destruction *from the first floor upwards* at any time, the company had an option to pay the whole insurance, and so end the policy ; or to rebuild, the policy continuing in force ; and how often soever the destruction by fire and the rebuilding might take place during the term, the policy continued in force and the deposit unimpaired. (Partaking the nature of perpetual insurance.)

"V.—The payment of the deposit, the acceptance of the policy, and the signature of the deed of settlement, made the assured a member of the company and a party to all the articles in the deed.

"VI.—The personal liability of the members for losses, beyond their own deposits, was half as much more, in case a single fire, beginning in one house and damaging one or more houses, should sweep away all the funds

of the company. (This was subsequently changed to the amount of the deposit only.)

"VII.—The concern was managed for the profit and loss of the members, interest being allowed to them on their deposits, in proportion to the whole amount received by the company, and a proportion of the losses and expenses charged to them and the balance settled at the expiration of the policy. (This "profit and loss principle" was expunged at an early day.)

"VIII.—Executors, administrators, and assigns were included as members, there being a provision for notice of transfer and assignment within a limited time with the approbation of the directors."

It was incorporated A. D. 1768, by the Colonial legislature.

In 1769, the "deed of settlement," under which the association was originally organized, was changed so as to prohibit insurance upon wooden buildings.

**81.** Speaking of this company, Dr. J. A. Fowler, of the *American Exchange and Review*, Philadelphia, in 1880, says:

"The Philadelphia Contributionship is a great guaranty against loss by fire, but it is not a mutual fire insurance company in the modern sense. It is essentially a bank of deposits for a fire-loss fund. It does not assume to charge the insured at all according to loss. In respect to adjustment of cash premium by dividend returns, it was mutual, as in other respects, up to 1763, and becoming nearly ruined thereby, it at that date abandoned this essential of a mutual company forever. The Contributionship has practically one stockholder—the corporation itself, in its perpetuity. This stockholder holds to-day more than \$1,800,000, and not as surplus to be divided."

In the long course of business of *one hundred years*, the company had but one lawsuit, which was decided in its favor. The first name upon the subscription list after the officers, is that of BENJAMIN FRANKLIN, who was one of the early directors, though it is not known that he took any marked interest either in the organization or subsequent management of the company.

**82.** *The Insurance Monitor*, November, 1866, thus humorously describes this company:—

"This quaint and venerable institution is a fit study for an antiquarian. \* \* \* John Smith (not Pocahontas's friend, but another John Smith) was the father of the company, and Benjamin Franklin was its godfather. Their fellow-contributors of the "Contributionship" were as odd as they were public-spirited, and instead of appropriating the proceeds of the two-shilling fine imposed at the monthly meetings upon absentees, to the emolument of the company, they laid them out upon *mile-stones*, and thus extended their liberality for the benefit of travelers to Philadelphia, as far as the money would go, which was twenty-nine miles. They considered trees before houses so much in the way, that they rated such risks higher than

mansions without such leafy adornments.\* Their engines and appliances were on so small a scale that the trees put them out, so that they could not put out a fire behind them. This anti-umbrage movement gave umbrage to some of their umbrage-loving fellow-citizens, who consequently started a rival mutual, and thus brought another Richmond into the field." (445.)

83. In 1783, the house of one of the contributors caught fire from a shade-tree. It was from this circumstance that the company was led to refuse houses with shade-trees about them.

84. The following is a copy of "SURVEY No. 1" of this company. It is somewhat brief as compared with surveys of the present day:—

"Surveyed June 1, 1752.

At the request of John Smith, merchant, his dwelling house on east side of King street, between Mulberry and Sassafras, 30 feet front, 40 feet deep, brick 9 inch party walls; 3 storys in height; plastered partitions; open newel bracket stairs; pent-house with board ceilings; garrets finished; 3 storys painted; brick kitchen, 2 storys in height; 15 ft. 9 front; 19 ft. 6 deep; dresser, shelves, wainscot closet fronts; shingling  $\frac{1}{2}$  worn.

We judge the above house and kitchen to be worth £1000.

Jos. For.

Samuel Rhoads.

£500 at 20s. per cent.

He proposeth to assure  
five hundred pounds  
hereon.

#### THE MUTUAL ASSURANCE COMPANY OF PHILADELPHIA.

85. The second "Richmond" brought into the field, as referred to in the quotation from the *Monitor*, was "the *Mutual Assurance Company for the insuring of houses from loss by fire in and near Philadelphia*," organized A. D. 1784, by members of the Contributionship, dissatisfied in the matter of refusal to insure houses with shade-trees. In the *Pennsylvania Gazette*, Oct. 27, 1784, appears an advertisement of the Mutual Assurance Company, "for Insuring Houses from Loss by Fire, kept by John Jennings, Clerk, at his house in Quarry Street."

86. To mark this event and the cause, the *Mutual* selected a "green tree" as its seal or badge, and the company itself is now frequently spoken of as the "*Green Tree*." It is still in existence, and confines itself exclusively to perpetual insurances on brick or stone houses and ground-rents.

Thus far it would seem that the City of Brotherly Love was in advance of any other of the cities of America in the practice of fire insurance.

### INSURANCE COMPANY OF NORTH AMERICA.

**87.** The well-known and long-tried company under the designation of "*The President and Directors of the Insurance Company of North America, of the City of Philadelphia,*" was incorporated A. D. 1794 as a stock company, transacting both marine and fire business, with life privileges also, although nothing has ever been done with this branch.

The following is said to be the manner in which this company originated :—

"In 1792, a scheme called "*The University Tontine*" was projected in Philadelphia, the object of which was to raise a sum upon lives, to be applied to charitable and other uses, specified in the articles of agreement. Many subscribers came forward, and a considerable fund was secured. But while the matter was thus progressing, further investigation led to the abandonment of the "*Tontine Association,*" November 3rd, 1792, the Tontine subscribers met at the State House, and it was determined to employ the Funds subscribed in such a manner as would be most feasible and advantageous to the subscribers. Accordingly a committee was appointed to devise and report a plan. The committee submitted their report at a subsequent meeting, held November 12th, when it was unanimously resolved that the "*Universal Tontine Association*" should be changed from its original objects, and that, in view of the necessity of a corporation to effect marine insurances, a society should be instituted to be called the *Insurance Company of North America*, with a capital stock of six hundred thousand dollars. The charter of this company, however, was not secured until 1794, although marine policies were written in 1792."

In the early part of the present century this office transacted the largest portion of the marine business of the country, and suffered heavily by "French spoliations."

It has paid regular dividends, with few exceptional years up to 1888, to the amount of \$10,503,934, and has paid losses to the amount of \$61,220,147, while the premiums received amount to \$85,518,621.

The following table exhibits the progress of the company for the past 17 years:

	1871.	1888.
Its original and present capital.....	\$ 500,000	\$3,000,000
Assets.....	3,200,000	8,527,193
Annual income.....	2,500,000	3,892,737
Stock, par value \$10 selling price....	38.	

INSURANCE COMPANY OF THE STATE OF  
PENNSYLVANIA.

88. Four days after the Insurance Company of North America, in the same year, "THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA," located in Philadelphia, was incorporated. It is still in existence among the oldest insurance corporations of the country. It was empowered to transact marine, fire, and life business; though it has done nothing in the life branch, and the marine branch was closed up in 1888.

For a history of Insurance in Philadelphia in the early days, see "Fowler's History of Insurance for two centuries," *passim*.

## EARLY MARYLAND COMPANY.

89. In the year 1794, "*The Baltimore Equitable Society for insuring houses from loss by fire*" was organized and chartered by the State, under a "deed of settlement" similar to that of the "Contributionship of Philadelphia." The premium was "deposited in the hands of the treasurer of said society." Insurances were made "on the terms and subject to the eventual deficiency of funds in the said deed of settlement mentioned and expressed." The insurance was for the full term of several years; at the end of which time the *deposit* made was repaid, with a proportionable part of the profits, "if any," or "so much of both or either of them as shall remain unappropriated towards the payment of losses, and the necessary expenditures of the Society." If the deposit was not demanded within a year, it was *sunk* for the benefit of the Society. And "when and so often as the said house, or any house built in the room thereof, shall be demolished by fire, during the term of this insurance, to pay within three months after such demolition." And in cases of partial loss only, "to be paid agreeably to the estimate thereof, or that the said buildings be repaired and put in as good condition as they were before such damage accrued," and this as often as such damage may occur during the term of insurance. (885.)

Should the property be insured elsewhere, the policy became void. And "if the entire funds of the Society should at any

time be insufficient fully to pay or discharge all losses incurred, then and in such case a just average shall be made, and the payment to be demanded in virtue of this policy, in case of loss or damage by fire to the premises insured, shall be a dividend of the said funds in proportion to the sum insured, agreeably to the true intent and meaning of the said deed of settlement which contained all of the provisions of the policy. There was no liability of insured beyond the deposit. It is still in existence, with assets less than \$2,000,000 and yearly income of about \$120,000.

#### EARLY VIRGINIA COMPANY.

**90.** "THE MUTUAL ASSURANCE SOCIETY AGAINST FIRE ON BUILDINGS OF THE STATE OF VIRGINIA" was incorporated on the 22nd day of December, A.D. 1794, by the General Assembly, and as it name imports, it was exclusively a fire company, confining its risks within its own State.

The plan adopted by the Society was upon the mutual principle, though differing in many particulars from the ordinary mutual organization. Some essential changes have been made in the original plan. Its present form of policy is a simple perpetual insurance contract.

The original form of policy of this Society was a curiosity in its way, copies of which will be found in the subsequent pages. (**139.**)

The Society is still flourishing. All losses and liabilities have been promptly met, and it is still in possession of a handsome surplus, resting securely upon its original foundation of real-estate security, the first insurance company of Virginia and the South.

#### EARLY MASSACHUSETTS COMPANIES.

**91.** "THE MASSACHUSETTS FIRE AND MARINE INSURANCE COMPANY" was incorporated in the year 1795, and located in the city of Boston.

"THE MASSACHUSETTS MUTUAL FIRE INSURANCE COMPANY" was chartered in the year 1798, also located in the city of Boston, and is still in existence as a flourishing institution. For a history of this company, See 9th Mass. Ins. Report, 1864.

## EARLY NEW YORK COMPANIES.

**92.** "*The Mutual Insurance Company for the insurance of houses from loss by fire*" was organized in the year 1787, under the *deed of settlement* then in customary use among English companies, and, until A. D. 1796, was the only *fire* insurance company in the city. In A. D. 1798, it was incorporated by the State Legislature as the *Mutual Company*. In A. D. 1809, it was changed to a stock company, with a capital of \$500,000, and is still in existence as the "*Knickerbocker Fire Insurance Company*," which name it assumed A. D. 1846 upon reorganization after the fire of 1845.

In the year 1796, we hear of "*The Associated Underwriters*" for a single year; a kind of "Lloyds," doubtless.

**93.** The *New York Insurance Company of the City of New York* was organized in 1796 as a mutual, but changed to stock, and incorporated 1798 with fire, life, marine and ransom of persons in captivity privileges. Capital \$500,000. The *New York* seems to have done marine business almost exclusively, as it is called the "*New York Marine*" in the early records, and survived the great fire of 1835. The *United Fire Insurance Company of the city of New York* was chartered the same year March 10th, with capital of \$500,000, but closed business in 1818. This was the first regularly chartered company in the State.

The "*Columbian Fire*" was chartered in 1801, but closed business in 1815.

The *Washington Mutual* was added to the list in 1802. It was changed in 1814 to a stock company, as the *Washington Insurance Company*, and about 1822 the word "*fire*" seems to have been added. Its capital was \$500,000. It was crushed in the fire of 1835.

The *Commercial* was chartered in 1804, but went out of existence in 1815. Its capital was \$250,000.

**94.** The *Eagle Insurance Company* was chartered in 1806; capital \$500,000. It succumbed to the fire of 1835; re-organized in 1836; was severely crippled by the fire of 1845;

re-organized in 1846, with capital of \$300,000, and is still in prosperous condition.

**95.** In the year 1806, "*The Phoenix Fire Insurance Company*" of London, England, established a branch office in New York; and in 1807, "*The Pelican Fire Insurance Company*," also of London, established an agency in the same city. They remained but a short time, however, driven away, doubtless, by unfriendly action of the State Legislature in regard to foreign fire offices, A. D. 1807-1809, which ultimated in 1814 in a prohibitory law, driving foreign fire companies from the State. The *Phoenix Fire* returned to the United States in 1879, and still remains there.

**96.** From about this time until A. D. 1815, ten more companies were added to the list in New York, among them "*The Globe Fire and Marine*," chartered A. D. 1814, with a capital of \$1,000,000, the first *millionaire* in the country.

In 1820 there were *seventeen fire* companies in the city of New York, with an aggregate capital of *nine millions* of dollars.

In 1835, there were *twenty-five fire* companies in the city of New York, of which *eighteen* were swept out of existence by the great fire of that year, and the remaining *seven* were more or less severely crippled.

**97.** FROM A. D. 1845, the year of the second great fire in the city of New York, up to 1849, there were but *seventeen fire* insurance companies in the city; having an aggregate capital of only some *five millions* of dollars, many of the resuscitated companies starting with reduced capitals.

**98.** By the report of the Insurance Commissioner of New York, ending with December, 1870, there were ninety-five State stock fire companies, with an aggregate capital of \$28,000,000; sixty-two other State offices, with aggregate capital of \$20,500,000. By the Chicago fire, October 8, 9, 10, 1871, *twenty* companies of the City and State of New York were annihilated, and many of the remaining agency companies were severely crippled. The total losses of New York companies at Chicago were \$20,724,457. The report for the year 1888 shows num-

ber of *stock fire offices* 55, assets \$61,730,009, capital \$20,084,020, net surplus \$15,356,820, risks in force \$4,808,836,440. *Mutual Companies* 7, total resources \$3,526,003, risks in force \$129,059,351.

*Of other State stock companies* there were operating in the State 75, with assets \$103,207,675, capital \$39,458,600, net surplus \$26,274,185, risks in force \$4,354,904,910.

*Foreign offices* 22, assets \$43,463,392, deposit capital \$4,400,000, surplus \$14,834,579, risks in force \$3,765,757,851.

#### EARLY CONNECTICUT FIRE COMPANIES.

99. Somewhere near the close of A. D. 1793, there was a fire insurance organization in existence in Hartford, all record of which has been lost, beyond two policies, dated Feb. 8, 1794; one numbered 2, for £800, the other for £600, to John Lawrence; both issued by Sanford & Wadsworth, for the "*Hartford Fire Insurance Company*;" the former is now in the possession of the Hartford Insurance Company, and the second is in the possession of the State Librarian.

These policies were adapted after the Amsterdam fire policy of 1744 (63); the first reads as follows:—

"Whereas, William Imley, Esq., of Hartford, or *whom else it may concern* wholly or partly, *friend or foe*, doth make assurance on his home against fire and all dangers of fire; moreover against all damage which on account of fire may happen, either by *tempests, fire, wind, oven fire*, negligence and fault of own servant, or of neighbors, whether those nearest or farthest off, all external accidents and misfortunes, *thought of and not thought of*, and in what manner soever the damage by fire may happen, for the space of one year, commencing on the 8th day of February, 1794, and ending on the 8th day of February, 1795, at 12 o'clock at noon, *valuing specially and voluntarily the said house at the sum insured*. And the assured, or whom it may concern, in case of damage or burnt, shall *need to give no proof nor account of the value, but the producing this policy shall suffice*. And in case it should happen that the said house, the whole or part, are burnt and suffer damage on that account, we do hereby promise punctually to pay and ratify, within the space of three months after the fire shall have happened, due notice having been given to us, *and no deduction to be made from the sum assured except two and a half per cent., provided said loss amounts to five per cent.*, under which no loss or damage will be paid. And in case of a partial loss, all that shall be found, saved and preserved shall be deducted after the deduction of the charges paid for the saving and preserving, and concerning which the *assured shall be believed on his oath without our*

*alleging anything against it. And so we, the assurers, are contented, and bind ourselves and goods present and to come, renouncing all cavils and exceptions contrary to these present, for the true performance of the premises, the consideration due us for this assurance by the assured at and after the rate of one-half per cent."*

**100.** The so-called company was evidently only an association of individuals for mutual protection, without any view to profit or to a miscellaneous business, as a policy with such conditions could not be safely trusted in the hands of every body. Some of the more striking points are italicized. The parties named as issuing the policies and the insured were well-known persons at that time. One reason for the adoption of this form of policy is to be found in the fact that Hartford was settled partly by the Dutch, and the foreign business of the New England States about that time was largely with Holland and Germany.

**101.** In 1794 the *Norwich Mutual Insurance Company* was founded, and in the year 1803, "*The Norwich Fire Insurance Company*" was incorporated, capital \$100,000, increased in 1849 to \$150,000; which, after a prosperous existence of nearly seventy years, succumbed to the Chicago fire of 1871. This was the first company to limit its policies to 75 per cent. of the value at risk.

**102.** In the year 1810, "THE HARTFORD FIRE INSURANCE COMPANY," and in 1819 "THE ÆTNA FIRE INSURANCE COMPANY," were chartered, both located in Hartford, and well known throughout the United States and Canada, as leading agency companies, and "missionaries of indemnity" to every town and hamlet in the land. They both passed through the fiery ordeal at Chicago, October, 1871, and at Boston one year later, not scathless certainly, but with capitals unimpaired, and without interruption to their business.

**103.** The city of Hartford has long been recognized as a great insurance centre, where fire, life and accident companies congregate. In the Chicago conflagration five of the fire companies of Hartford lost everything, viz.: Merchants, Connecticut, North American, Putnam, and Charter Oak. The last three have retired from business, the *Connecticut* still continues, and the *Merchants* was reorganized as the *National*.

## EARLY RHODE ISLAND COMPANIES.

**104.** In the year 1800 the *Washington Fire Insurance Company* and *The Providence Mutual* were organized in the city of Providence, for marine insurance mostly. In 1817 these two offices amalgamated under the name of *Providence-Washington Insurance Company*. The first joint fire policy was issued in 1821. The combined company, after a prosperous career for many years, went temporarily out of business in consequence of heavy losses at the Chicago fire. It was immediately reorganized, and is now amongst the most prosperous offices of the country.

**105.** In the early part of the nineteenth century, Rhode Island had a number of small companies, mostly engaged in the marine branch, however. The *Warren Insurance Company* of 1800 has been reorganized for the purpose of prosecuting French spoliation claims, from which it was a heavy sufferer.

In 1647, as we learn from Pitkin's History, 49, the popular government of Rhode Island resolved that the "Laws of Oleron" should be in force for the benefit of seamen.

## FIRE INSURANCE CONTRACT.

**106.** The fire insurance contract is held by the courts to be in the nature of a *bond of indemnity* or guaranty against loss not wilful, from a specified peril, to a given amount, upon certain subjects, and for a specified period of time. Or, in other words, that the underwriters will pay, within the amount of the policy, for as much of the property at risk as may be lost or damaged by the peril insured against; the consideration therefor being the premium paid by the insured. (109.)

1 Philips Ins. 1, 3, § 4; 2 Valin's Comm. 26; Angell Ins. 1, § 1; Emerigon, ch. 1, Definitions; 4 Ins. Law Jour. 508, U. S. C. C. La., May, 1875; Glendale Wool Co. *vs.* Protection Ins. Co., 21 Conn. 19 (3 Bennett's F. I. Cases, 214); Weskett Ins. 289; Marsh. Ins. ch. 1; May Ins. 2, n.; Ins. Co. N. Amer. *vs.* Commonwealth, 8 Ins. Law Jour. 66; Civil Code, L. C. § 2468; 14 Grants Chy, 463.

## A PERSONAL CONTRACT.

**107.** When insurances against loss by fire upon *movables*, as goods, wares, and merchandise in various locations, were introduced by the *Sun Fire Office* in 1710. (59.)

"The society, being sensible that such an extensive undertaking might give opportunities for frauds, took all possible precautions for preventing them; and, therefore, their policies for insurance were so framed as to be contracts *only between the office and the parties insuring*; the loss secured against being thereby restrained and confined to the contracting persons only."

Since which time the same conditions have been continued in fire policies, both English and American, applying alike to *movables and immovables*; and the courts now recognize it as a *personal contract only*, and *not an insurance of the subject named* in the policy. It is an obligation to make good *to the insured* every loss *he* may sustain from the peril insured against, according to the nature and terms of the contract; and, as a rule, *not an obligation to make good every damage that, from the same causes, the property covered may sustain without regard to its ownership.* (1224, 1237.)

*Lynch v. Dalzell*, Ho. Lords, 1729, 3 Brown's Par. Cases, 497; 4 *Id.* 431; *Lucena v. Crawford*, 2 Bos. & Pull. N. R. 300; 2 Black. Comm. 458; *Carpenter v. Ins. Co.*, 16 Peters, 493; *Abraham v. Ins. Co.*, U. S. C. C., Iowa, Dec. 10th, 1884.

**108.** It has become customary to speak of *property as being insured*, when the *interest* of the *insured* in the property only was intended. Lord Chancellor Hardwicke, speaking upon this subject, A. D. 1743, observes:—

"To whom or for what loss are they, the Hand-in-Hand Fire office, to make satisfaction? Why, to the person insured, and for the loss he may have sustained; for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage."

*Saddler's Co. v. Badcock*, 2 Atkins R. 554; *Lynch v. Dalzell*, 3 Brown's Par. Cases 457; 2 Black. Comm. 458; *Shaw's Ellis Ins.* 153; *Cummings v. Ins. Co.*, S. C. New Hampshire, June, 1873, and authorities there cited.

**109.** The Supreme Court of Pennsylvania held that it was not the *property*, but the *beneficial interest in the property*, which is insured; and that only the value of such interest can be recovered by such owner upon the loss, the contract being one strictly of indemnity. (650, 656, 1911.)

1 *Ins. Law Jour.* 60; 2 *id.* 769; *Richardson v. Home Ins. Co.*, 21 U. C. C. P. 291.

#### SUBSCRIPTION.

**110.** It is an unilateral contract in the nature of a "*deed poll*," which, though executed by only one of the parties to it,

yet by its unconditional acceptance and the *payment of the premium* by the other party, becomes, with all its terms and conditions, equally binding upon both from and after such acceptance, and will control the adjustment in case of loss. (166.)

Tait *et al. v. N. Y. Life Ins. Co.*, 2 Ins. Law Jour. 810, § 186; May Ins. 5, citing 105 Mass. 149; Routledge *v. Burrell*, 1 H. Black. 254 (1 Bennett's F. I. Cases 35); Cons. St. L. C., ch. 68, § 26.

**111.** In France the contract is held to be synallagmatic, or one of *reciprocal obligations*; the insurer guarantees indemnity to the insured, and the insured in turn binds himself to pay to the insurer the premium agreed upon; hence, in order to conform to this principle and the nature of the contract, the *Code de Commerce* requires all policies to be signed by both parties; and until so signed, they are not operative.

Emerigon (Meredith's ed.) 5 *et seq.*: 1 Duer Ins. 108; 2 Valin's Comm. 66, 69; Bouv. Law Dict. Title *Synallagmatic*.

**112.** In the German policy, the reciprocity of the contract is recognized and consented to by a special stipulation, as follows:—

"The acceptance of the policy and the renewal receipts by the insured shall constitute his assent to the premium and duration of the insurance." (431-2.)

#### PAROL OR WRITTEN.

**113.** While under ordinary statutory provisions, insurance against some of the usual risks, whether marine or fire, require the contract to be in writing, there is no general provision of law in the United States relating to insurance specifically requiring such contracts to be in *writing* (1393 *et seq.*); and being usually to be performed within a year, it is not within the statute of frauds.

1 Duer Ins. 60; Meagher *v. Aetna Ins. Co.*, 20 U. C. Q. B. 607; 11 U. C. C. P. 328

In some of the States, Louisiana, Georgia, and Ohio, the contract is required by law to be in writing.

**114.** In England there are several statutes requiring insurance contracts to be in writing. An insurance not in writing would be void as an evasion of the stamp duty, if from no violation of any other requirement of the law. Shaw's Ellis Ins. 55, n.

**115.** The French code now requires not only that the contract shall be in writing, but that it shall bear the date of the day of subscription, expressing whether before or after noon, with sundry other particulars, and especially that no *blank spaces* shall be left in the policy. (41.) Most, if not all, of the other Continental countries require the contract to be in writing, and some of them even prescribe the form of the policy.

1 Philips Ins. 7, § 9; 2 Magens Essays, 65, 213; 2 Valin's Comm. 29, 151; Emerigon, 39, 289; 1 Duer Ins. 81, 76, 103, 153; May Ins. 18.

**116.** "*Honor policies*": From "*Le Guidon*," we learn that "Formerly insurances were made without *writing*; they were termed *in confidence*, because the person stipulating for insurance did not make his bargain in writing, but trusted to the good faith and honesty of his insurer." Insurances in the slave trade were usually verbal, "upon honor," but in consequence of abuses and disputes engendered, this practice was subsequently prohibited in all commercial places.

2 Valin's Comm. 26; 1 Philips Ins. 7, § 8; Emerigon, Meredith's Ed. 26; May Ins. 18, § 22, quoting Alauzet.

**117.** EMERIGON says:

"I agree to the general rule that writing is extrinsic to the substance of agreements; they are reduced to writing for the purpose of more easily preserving their proof. But the common law rule ceases in its operation in all cases where writing is expressly required by law." (p. 26.)

**118.** In the matter of *parol* insurance, Mr. PHILLIPS (vol. I, p. 8, § 9) says:—

"It does not appear why, under the common law, a valid *oral* insurance may not be made against loss by fire, or the ordinary perils of the sea, if it were upon a real interest, for a good consideration, and made in terms sufficiently explicit." (1393 *et seq*)

1 Duer Ins. 60; Philips Ins. 11, 60; Smith v. Columbia Ins. Co., 17 Pa. St. 253; May Ins. 13, § 14; Penley v. Beacon Ass. Co., 7 Grant 130.

**119.** Justice GIBSON (Smith v. Columbia Ins. Co., 17, Pa. Sta. 253) says:—

"The conclusion is inevitable that an actual concurrence of assent at any particular moment is the ruling circumstance, the time of communicating it being comparatively unimportant."

**120.** The weight of authority would seem to coincide with the above citations, as New York, Alabama, and some other States have held *parol* contracts of insurance binding, and their

courts universally enforce them. See 16 Ohio R. 148, per contra.

**121.** An underwriter is under no obligation to insure for all or any objectional parties (19 Mo. 583). Nor is the mere execution of the policy by the underwriter conclusive, so long as it remains in his custody; there must be a delivery—actual or constructive—and payment of the premium, or waiver of such payment, before the contract, will be binding. (792, 944.)

**122.** The existence and delivery of a policy is not necessary, however, to the validity of the perfected contract. Any written assent of one party to the written terms proposed by the other will form a valid contract; but such contract must be clearly established.

Patterson vs. Ben Franklin Ins. Co., S. C. Pa. 1875 (5 Ins. Law Jour. 122).

**123.** A receipt for the premium specifying the subject and sum insured, and the duration of the risk, delivered to the insured, will bind the insurer, subject to the stipulations of the form of policy in ordinary use by the insuring company, unless otherwise specifically agreed. (154.)

1 Duer Ins. 66; May Ins. 1; 5 Ins. Law Jour. 123.

**124.** The general principles as to the contract are: "So long as the contract consists only of the mutual promises of the parties, the signatures of both are requisite, the promise of each being the consideration of that for the other; but when the premium has been acknowledged to have been paid, the signing of a policy, or an agreement for one, by the underwriter, constitutes a valid contract." (166.)

1 Phillips Ins. 11, § 14, and authorities cited. (166.)

#### UNDER SEAL.

**125.** All of the early fire policies were required by the common law to be *under seal*; but the old doctrine, that a corporation must contract *under seal*, no longer prevails. A corporation, as well as an individual, may, unless restrained by the requirements of its charter, authorize its agents to bind it without a *seal*.

United States v. Dandridge, 12 Wheat. 64, Osborne v. U. S. Bank, 9 id. 738.

**126.** A *seal* affixed to an instrument makes it a specialty and is held to express a consideration; hence when the consideration is acknowledged in the instrument, as is customary, though not universal in the policy, a *seal* is not necessary to the validity of the contract; on the other hand, in contracts *under seal*, the consideration need not be otherwise acknowledged as it may be proved *aliundi*. No witness is necessary.

Cook v. Bradley, 7 Conn. 57; Dodge v. Burdell, 13 Conn. 170; Perrine v. Cheeseman, 6 Halst. 174; Mouton v. Noble, 1 La. Ann 192; May Ins. 15, § 16; Montreal Ins. Co. v. McGillivray, 13 Moore P. C. C. 87.

**127.** Chief Justice PARKER says: Policies, though *not under seal*, have nevertheless ever been deemed instruments of a solemn nature, and subject to most of the rules of evidence which govern in the case of specialties."

1 Phillips Ins. 44, § 66, and authorities cited.

**128.** When, in a policy, against fire *under seal*, the insurers agreed to pay the loss "according to the tenor of their printed proposals," and it was objected that a distinct paper could not be incorporated into a *sealed* instrument, the court held "that it might be so was too clear to admit of a doubt." (165.)

1 Phillips Ins. 47, § 70, and authorities there cited; *Id.*, p. 48, note 3.

**129.** In England, when a policy is not under *seal*, an action may be had against the subscribing, or any other directors or members. But if under *seal*, those only who are parties to it can be sued. Under the old deeds of settlement, the companies were not sued by name; the suit was brought *versus* the subscribing directors on the policy.

May Ins. 15, §§ 16, 17; 3 Eng. Law and Eq. R. 420; Safford v. Wyckoff, 4 Hill 446.

**130.** If the charter of an insurance company provides that its policies shall be under seal, they will be precluded from offering in evidence as a matter of defence an unsealed instrument.

Lindauer v. Delaware Ins. Co., 13 Atk. 461; Tucker v. Prov. Ins. Co., 7 Grant 122.

## SUBJECTS OF INSURANCE.

**131.** The insurance contract, formerly defined as a maritime or, at most, a mercantile one, is now extended to embrace not only marine and fire risks, but deaths and many other casualties

as well, to real and personal chattels, including every known subject in which an insurable interest can be legally recognized. (658.)

**132.** As has been tritely remarked :

"They may insure their crops against the devastation of hailstorms; their plate-glass against the carelessness of servants or damage of evil-disposed persons; their cows and horses against the ravages of disease; their racehorses against the infidelity of grooms; and their tills and strongboxes against the defalcation of dishonest clerks."

**133.** Justice Lawrence (5 Bos. & Pull. 341) says: "The insurance contract is applicable to protect men against uncertain events which may in any wise be of disadvantage to them." Lord Chancellor Hardwicke, A. D. 1743, says: "Insurances were made for the benefit of trade, and not that persons unconcerned therein, and without any interest in the property, should profit thereby."

#### THE UNEQUAL CONTRACT.

**134.** It was a very pertinent view of the fire insurance contract, as given by the late Judge McCunn, of the New York Supreme Court, in the case of *Sturm v. Great Western Ins. Co.* (Jan. 17, 1871), that:—

"In negotiating a contract of insurance, the parties are not upon a level, nor do they deal at arm's length. The insurer is presumed to be ignorant, and the insured informed in respect to the subject to be insured. Hence in forming the contract, the insurer, except he undertakes to inquire for himself, does not rely on his own resources, but reposes exclusively on the intelligence communicated to him by the insured. And hence, further, the parties occupying this unequal position, the law exacts of the party holding the position of advantage,—i.e., the insured—the utmost good faith and candor in communicating the facts affecting the risk. So it is the contract of insurance that is characterized, in legal language, as a contract *uberrimæ fidei*. And the responsibility of the insured is proportionate to his obligation; so that, being in duty bound to disclose whatever may be material to the hazard, or may enter as an element in the estimate of the premium."

**135.** "Ye PATRIARCH," of the *Insurance Monitor*, New York, says truly:—

"In no contract is one party more completely at the mercy of another than the underwriter in insurance. He is necessarily ignorant of facts and circumstances that may be vital to the risk, and hence open to the fraud of designing men, who may withhold or misrepresent 'material' facts."

**136.** As this contract has for its basis only the representations of the insured, it is not to be wondered at that it should be sometimes made use of by designing men for perpetrating heavy frauds under the guise of insurance.

**137.** It was to guard against, and, as far as possible, circumvent all attempts at fraud upon underwriters, that so many safeguards, in the shape of "*conditions of insurance*," were thrown about the contract, and not with a view to deprive honest claimants of their rights under the policy, or to enable companies to find technical objections by which to rid themselves of liability under proper claims. (170.)

## THE POLICY.

**138.** By the English statutes—10th Anne, chap. 26, § 68, A. D., 1712:—

"All deeds, instruments, and writings for payment of money upon the loss of any ship or goods, or upon any loss by fire, or for any other purpose for which any writing, commonly called a *policy of assurance* or insurance, is or hath been usually made, are to be deemed '*policies of assurance*.'"

By the amended *Stamp Act*, of 1873, the term policy "includes every writing whereby any contract of insurance is made, or is evidenced, not including sea insurance." And such the instrument containing the specific terms of the insurance contract, reduced to writing, has been called to the present time. Civil Code L. C., § 2480.

Emerigon (p. 25 Meredith's edition) says:—

"The *policy* is the *external* form of the contract, and evidences its existence. The *internal* form rests in the respective obligations of the parties, and gives its essence and legality to the contract."

**138a.** The policy, *per se*, is but the form and embodiment, the expression and evidence of what has been previously agreed upon, adding nothing thereto and detracting nothing therefrom. (192, 1400.)

Perkins v. Washington Ins. Co., 4 Conn. N. Y. 465; 4 Wend. N. Y. 645; 8 Ins. Law Jour. 1423. For the origin of the name, see 1 Mag. Essays 1; Weskett Ins. 400; 1 Arnould Ins. 17; Angell Ins. 8, 50; Hopkin's Manual Marine Ins. 109.

**139.** The form of "policy of insurance" first used in England was for marine purposes, and is supposed to have been introduced

into that country by the Lombards some five to six centuries since. (13a.) It seems to have been a very crude and imperfect instrument, for it is spoken of very disparagingly by the courts. (172.) Some of the criticisms are here given :

" Its antiquity cannot preserve it from just censure, it being very irregular and confused, and frequently ambiguous from making use of the same words in different senses." Chief Justice *Parker*, Park. Ins. 14.

" It has always been considered in courts of law as an absurd and incoherent instrument." Justice *Butler*, Park. Ins. 56.

" The instrument is conceived in an inaccurate form of words." " Length of time and a variety of decisions have reduced it to a certainty." Lord Mansfield, 1 Burr. 347. (170.)

Hopkins, *supra*, *passim* ; Weskett Ins. 401 ; Marsh. Ins. 211 ; 1 Arnould Ins. 20 ; Dougl. 70 ; Park. Ins. 113.

140. Strange as it may seem, after so many decisions against it, the marine policy of to-day in England, varies but little from that brought over by the Lombards. A writer in the *Assurance Magazine*, A. D. 1850, says of it :—

" The policy, as the exponent of the scheme, once framed, was considered to be sufficient, and to be capable of no improvement—at least, we may suppose so, from the number of years the instrument has existed in its present state ; while all modern endeavors are to ' explain its explanations,' not to amend it or construct a new formula." . . . " For it must be apparent to all that the present instrument is full of obscurity, and that its language is in part obsolete ; and, unfortunately, it has been rendered darker by the frequent illuminations that have been lavished upon it ; so much so that, in the hands of the uninitiated, it is as vague as Miranda's recollections—

" And rather like a dream than an assurance."

141. " But the obscurity and uncertainty complained of do not probably arise altogether from any imperfection in the policy which can be remedied. A contract embracing so many interests and parties, and liable to be affected by so many events, cannot but be subject to some difficulties of construction, however skillfully it may be drawn." 1 Philips Ins. 5. (181.)

142. The marine policy in use in the United States is not obnoxious to the animadversions above referred to, as many new features and various modifications, the suggestions of experience and necessity, have been introduced from time to time, which are not to be found in the English policy.

## THE FIRE POLICY.

**143.** The English *fire* policy, although the direct descendant, of the marine, came into use some centuries later, and fortunately, did not inherit all of the idiosyncracies peculiar to its venerable ancestor.

Lord Chancellor HARDWICKE (A. D. 1743) says :—

“Now, these insurances from fire have been introduced in later times, and, therefore, differ from insurances on ships, because there, *interest or no interest* is almost constantly inserted; and if not inserted, you cannot recover, unless you prove a property.” 2 Atk. 554.

**144.** While the general principles of law applicable to *fire policies* on land coincide with those applicable to marine insurance, the specific provisions of the contract in the two branches differ, of necessity, very materially from the entirely different nature of the risks assumed, and the consequent dissimilarity in the several modes of adjustment of losses. In marine insurance the property at risk at sea is beyond control of the insured while in fire insurance the property is in his immediate possession and custody.

**145.** In marine policies, usually all of the *written contract* appears in the instrument subscribed by the insurers; while, in *fire policies*, reference is usually made in addition (**171**) to rules and regulations, conditions and requirements, proposals either indorsed upon or annexed to the inscribed instrument, and referred to in and made a part of it, by which the stipulations become more fully a portion of the express contract. In mutual companies, such stipulations are usually the provisions of the several charters, or rules and regulations in accordance therewith.

**146.** Policies in use in different countries—and in the several states of the same country, as in the United States (**134**)—may and do differ widely in form; yet the law of insurance may be substantially the same in the several countries or states. Such differences, under the same general laws, are usually

significant of a different intent, and may vary materially the interpretation of the agreement by restricting in some respects the liability of the insurers, and in others diminishing proportionally the rights of the insured, and thus affect, not merely the *form*, but the *subject*, of the contract, and, consequently, the legal construction of the policy.

#### PRINTED FORMS.

**147.** The use of *printed forms*, both for marine and fire policies, in the blanks of which are written the special covenants on which the parties may agree—now become universal—dates from a very early period in the history of insurance. These *forms* contain the necessary and customary clauses, conditions, stipulations, and exceptions of the contracts, according to the laws, usages, and customs of the places where insurances may be made, with blank spaces for inserting the facts requisite to complete the validity of each particular case.

The books of the old writers on insurance are thickly sown with these *forms*, shaped in accordance with the manner and genius of each country and epoch. That of Ancona, in Italy, found in Latin and Italian, is said to be very old. (**200. 1561.**)

With various modifications and changes, to meet the times, these *forms* have come down to the present day. To their existence many of the legal decisions, both ancient and modern, expressly refer; hence, an acquaintance with these forms and their origin is essential to a proper understanding of the various commentators, and the decisions of the various tribunals.

1 Pars. Ins. 65, n. 1; 2 Valin's Comm. 30, 2 Magens' 294; Weskett 402. 610; 1 Arnould Ins. 22. 79.

#### THE LAW OF THE INSURANCE CONTRACT.

**148.** It is a peculiarity in underwriting that laws relative to insurance have grown out of the business itself; the courts doing but little more than adopting and enforcing the conditions and usages of underwriters upon the principles of common law. It is the written portions which usually give rise to questions of construction. 1 Pars. Ins. 65, n. 1; May Ins. 3.

**149.** Inasmuch as the peculiar nature of a contract of fire insurance, in view of the undetermined contingencies for which it provides, necessitates the addition of numerous restrictive conditions for the adequate protection of the underwriter, not found in the ordinary business contract, so some nice points of distinction have been introduced to meet the requirements of these conditions, which will be found as various as the numbers of companies issuing the policies containing them. (181.)

**150.** "The law defining the relation between the underwriter and the insured is the policy of insurance, with all of its clauses, conditions and stipulations, by which their mutual rights and liabilities are defined and measured." 4 Wright Pa. (40 Pa. St.), 289.

**151.** Although the insurance contract imposes or implies mutual obligations, those on the part of the insured are merely conditions on which his own right to indemnity depends. All the positive stipulations of the contract that may be enforced by law are on the part of the underwriters. The conditions of the policy do not, in any instance, create a duty that the underwriter may compel the insured to perform; and although the violation by the insured may constitute a valid defense for the underwriter, it never furnishes substantial cause of action

1 Duer Ins. 61, 151; Angell Ins., § 4; 1 Parsons Ins. 44; 1 Arnould 35, § 30; Weskett xxvii.

**152.** With a view to a systematic analysis of the *general principles* underlying the fire insurance contract—as contained in the policies of the various nationalities—modified and controlled by their respective conditions, stipulations and warranties, a number of forms of English, Colonial, Continental, and American policies, ancient and modern, will be found in the succeeding pages, with their several peculiarities noted, by which can be traced, not only the progress of *fire insurance* from its infancy, as a crude system of self-protection by a mutuality of interest, to its present elevated position as a recognized science, subject to certain uniform rules, and requiring for its proper conduct broad, analytical and comprehensive views of men and things, but the legal inquirer will also be enabled to trace the origin and applicability of numerous early decisions and

precedents of the courts upon the various conditions, stipulations, and exceptions of the insurance contract, which are not unfrequently "doomed to ambiguity, problem and paradox."

**153.** In order to complete the proposed legal dissection of the policy, it will be necessary to consider under appropriate heads, in detail, the various conditions, express and implied, upon which the force and effect of the contract depend. To this end the policy will be treated in the following

### ORDER OF ARRANGEMENT.

- I. Requisites of the Policy.
- II. Conditions of the Policy, Nature of.
- III. Principles of Construction of the Conditions, including Usage.

#### IV. The various KINDS of Insurance, viz. :—

- |                                |  |                               |
|--------------------------------|--|-------------------------------|
| 1. Joint-Stock or Proprietary. |  | 8. Policies on Profits.       |
| 2. Mutual.                     |  | 9. Rent and Lease Policies.   |
| 3. Participation.              |  | 10. Open and Valued Policies. |
| 4. Perpetual.                  |  | 11. Gaming or Wager Policies. |
| 5. Installment.                |  | 12. Term Policies.            |
| 6. Steam-boiler.               |  | 13. Short Insurance.          |
| 7. Plate-glass.                |  | 14. Certificate of Insurance  |

#### V. The various FORMS of policies, viz. :—

- |                          |  |                                     |
|--------------------------|--|-------------------------------------|
| I. Specific, viz. :—     |  | II. Compound or Collective, viz. :— |
| 1. Valued.               |  | 1. General.                         |
| 2. Open Fire or Running. |  | 2. Floating.                        |
| 3. Transport.            |  |                                     |

#### VI. The PRO-RATA clause, viz. :—

- |                             |  |                                |
|-----------------------------|--|--------------------------------|
| 1. Pro-rata proper.         |  | 3. Three-fourths value Clause. |
| 2. Average or Co-insurance. |  | 4. Three-fourths Loss Clause.  |

#### VII. NATIONALITIES, viz. :—

- |              |  |                 |
|--------------|--|-----------------|
| 1. English.  |  | 3. Continental. |
| 2. Colonial. |  | 4. American     |

VIII. LEGAL CONSTRUCTION of the conditions of insurance, each stipulation of the policy being separately considered and treated of, with court adjudication thereon.

IX. ADJUSTMENT OF LOSS, and the law of the contract relating thereto.

X. APPORTIONMENT AND CONTRIBUTION, with examples.

## REQUISITES OF THE POLICY.

**151.** Definiteness is essential to the validity of the insurance contract. "To complete a contract it is necessary that the premises to be covered, (160), the risk (158), the time for which the insurance is to run (163), and the amount of premium to be charged (162), shall all be definitely fixed." (*Strohn v. Hartford Ins. Co.*, S. C., Wisconsin, 4 Ins. Law Jour. 680.)

*Christie et al. v. North British & M. Ins. Co.*, 3 Cases in Court of Sessions 350; 1 Bennett F. I. Cases 145; *Emerigon Ins.*, Meredith's Ed. 239; *May Ins.* 26, § 39.

**155.** While all fire policies contain the same general essentials as to the contract, differing only in the number and nature of their *conditions* or stipulations, the following are absolute *requisites of a policy* under the *fire insurance contract*, with the principles attending the same. (952.)

2 Valin Comm. 31; 1 Magens Essays 3, § 5; 2 *id.* 169. Ord. France; 187 Ord. Prussia; 257 Ord. Stockholm; 1 Arnould Ins. 23, citing 28 Geo. III, ch. § 6; *id.* 40; 4 Ins. Law Jour. *supra*; *May* 26; 1 Benn. Cases 145, *supra*; Civil Code L. C., § 2569.

**156. 1st. Name and residence of the party insuring:** It is necessary that the party shall be authorized to *underwrite policies*, and that the contract be made in a form to bind the underwriters. The essential stipulation is expressed by the words "*do insure*." The proper name and title of the company must be used. (1652.)

1 Phillips Ins. 3, § 11, and authorities cited n. 3; *id.* 25, § 30; 2 Valin's Comm. *supra*, and authorities cited. (155.)

**157. 2d. Name and residence of the party insured:** The policy must show in whose favor, or for whose benefit and use it is intended to be made, either expressly naming the parties, or by direct implication, as in policies "for whom it may concern" (1233), as no one but the party thus specifically named, or intended by the "general words," or their several legal representatives, has any right under the policy. 28 Geo. 3, ch. 56.

*Park. Ins.* 19; 2 Magens Essays 31; 3 Bennett F. I. Cases 619; *Ogden v. Montreal Ins. Co.*, 3 U. C. C. P., 513.

**158. 3d. Peril, risk or hazard:** "The risk is of the essence of insurance properly so called; it is the principal ground of the contract, which would cease from the moment that deprived it of the aliment that gives it life" (*Emerigon* 3).

The risk or peril insured against should be distinctly specified and limited, as in fire policies, "against all such immediate loss or damage as may occur *by fire* to the property specified." (1655, 1663.)

1 Arnould Ins. 34; 1 Phillips Ins. 26, § 35, 36; Hopkins Mar. Ins. 53, 55.

**159. 4th. Subject or interest covered by the insurance,** with *ownership* and *occupancy* or *use of premises*: The subject covered may be a valuable property, interest or contingency owned or held in trust, or otherwise, by the insured, and must so appear upon the face of the policy, and to this extent will be a warranty; and as the contract will cover no other subject, interest or occupancy than those described in the policy, its validity will depend upon the sufficiency of the description by which they can be distinguished or identified. (1520, 1912.)

1 Phillips Ins. 25, § 31; *id.* 249, § 186, and authorities cited; Emerigon Ins. 233, 247; *Chapman v. Lancashire Ins. Co.*, 13 L. C. J. 36; 14 *id.* 72.

**160. 5th. Location:** The location of the property at risk under insurance should be stated with sufficient accuracy to be readily found and clearly identified or defined. The adjudication of some of the western courts of late years have rendered great care necessary where chattel property is the subject of insurance. See "Contained in" (1288) for authorities.

**161. 6th. Amount of maximum liability:** The liability of the underwriter is, in fire insurance, limited by the sum specified to be covered by the policy; it may be less, but never can be more. It may be applied to one or more subjects or interests, or to successive subjects as in "open fire policies." (309.) It may also be limited by the terms of the contract to a certain proportion only of the value of the subject covered, as one-half, two-thirds, three-quarters, as in the mutual system. (1655 et seq.)

Emerigon 77; 1 Phillips Ins. 258, and authorities cited; *Walker v. Metrop. Ins. Co.*, 65 Me. 371.

**162. 7th. Consideration, premium, rate per cent, amount:** The premium agreed to be paid is the consideration, and should be clearly set forth in the policy. In the customary forms of the fire policy, the payment of the consideration is acknowledged,

and imports settlement by cash or note, or both, of the premium charge simultaneously with the issue of the policy. (776.)

*Emerigon* 77; 1 *Phillips Ins.* 258, § 504, n. 3; 1 *Arnould Ins.* 35; *Walker v. Prov. Ins. Co.*, 7 *Grant* 137, affirmed 8 *id.* 217.

**163.** *8th. Duration of liability:* The duration of liability of the Company in fire policies is always limited to some specified period of time, as thirty days, one year, or five years, as the case may be. In warehouse policies where merchandize is received and discharged constantly, it is customary to make the entries as to the subject at risk, amount covered thereon, and the rate of premium to be charged thereon, with date of commencement of the risk, leaving the "time open" or "undeclared," until such time as the goods at risk shall be removed or sold, when the premium is estimated at short rates, for the time at risk, and so entered. (301, 848a.) Authorities as above cited.

**164.** *9th. Date of commencement and termination of the risk, day and hour:* In no species of written contracts is the insertion of the date, hour, day, month and year of the commencement and termination of the policy more essential to the security of the underwriter than in the fire insurance contract. The liability of the Company for loss not unfrequently hangs upon the day, and sometimes even the hour of the termination of its liability. The customary form is "from 12 o'clock, noon," of the day of commencement "until 12 o'clock, noon," of the day of termination. (847.)

*Weskett* 164; 1 *Arnould Ins.* 31, § 39; 1 *Phillips* 28, § 37; *Kimbal v. Fire Ins. Co.*, 6 *Gray Mass.* 204; 4 *Ins. Law Jour.* 682-3.

**165.** *10th. Conditions and stipulations of the Contract:* Parties to a contract of insurance—except where restricted by law, as in the "standard policies"—may insert in the policy what conditions they may agree upon, provided only that there be nothing therein repugnant to the nature of the contract or contrary to the criminal code or public policy. Any words suitable to indicate the intention of the parties may be used in the formation of the contract. For authorities see 169 et seq.

**166.** *11th. Subscription; counter subscription by the agent:* The policy, to be valid, must be subscribed by the

officers of the Company, in conformity with the requirements of the charter; usually by the Secretary, the other names being *in fac simile*. In policies which are not to be complete until countersigned by some duly authorized agent, the signatures of the officers are printed, and the policy becomes operative only after such counter-signature of the agent. (480.) Thus the policy being subscribed by one of the parties only becomes of the nature of a *deed-poll*, which is only of one part, and the sole deed of the grantor. The words are his, and bind him only, and are to be taken most strongly against him and in favor of the grantee, thus differing essentially from an *indenture*, which bars either party from excepting to any thing contained in it, and each is estopped from disputing the validity of any part. (110.)

"1 Arnould Ins. 38, 41, last paragraph of § 35; 1 Duer Ins. 65; Emerigon 33, 40, says: "It is the signature which gives life to and perfects the contract, 4 Lan., N.Y., 433; 22 Ind. 73; Dimock v. N. B. Mut. Asso. 1 Allan 398.

No seal is necessary, unless made so by the requirements of the policy. (125.)

The counter-signature of the policy by "the duly authorized agent," although expressly required under its stipulations, may be dispensed with when the intention to execute is sufficiently plain and can be so shewn. Delivery of the instrument is a formal waiver of lack of counter-signature, "A Company cannot take advantage of its own wrong."

Hibernia Ins. Co. v. Connor, 29 Mich. 241; 3 Ins. Law Jour. 618; Westchester Ins. Co. v. Earle and Reynolds, S. C. Mich.; 5 Ins. Law Jour. 61, and authorities cited; 103 Mass. 244; 5 Daly, 298; 36 Conn. 503. Per contra, 13 B. Monroe, Ky. 399; Perry v. Newcastle M. L. Co., 8 U. Can. Q. B. 363; Fourdrinier v. Hartford Ins. Co., 15 U. C. C. P. 414.

**167.** *12th. Date of subscription:* This is only presumptive, not conclusive, of the fact it attests. The actual date of execution may be shewn by parol evidence, though different from that which the policy bears. (161, 816.) 1 Arnould Ins. 38, § 33.

**168.** *13th. United States stamps,* as required by law. Requirement now obsolete.

## CONDITIONS OF THE FIRE POLICY.

**169.** The insurance policy is a conditional contract, and has been aptly designated as a "perpetual experiment," "entirely on speculation," where the underwriter is completely at the mercy of the insured, being necessarily ignorant, beyond the facts that inquiry may elicit as to the circumstances attending the risk, hence open to fraud by designing parties who may misrepresent material facts connected with the subject of the proposed insurance. Hence the various specific conditions, printed or written, attached to the policy result from the peculiar nature of the contract. They are simply general stipulations for protection of the underwriter against fraud, which the insured, by the acceptance of the policy, agrees to observe during its currency. They have been found essential to the business, have arisen out of and grown up with the business, and are inseparable from it, and are now ingrafted into the policy as a part of the system. (135.)

"May Ins. 3, § 4 and authorities cited; 2 Ins. Law Jour. 619; 3 Burr. 1907, Lord Mansfield." *Langel v. Mut. Ins. Co.*, 17 U. C. Q. B. 524.

**170.** In this connection Lord St. LEONARDS (in the case of *Anderson v. Fitzgerald*, 4 House of Lords, c. 484) says:

"The Courts, observing how very often companies of this nature have been subjected to frauds, will carefully guard them against fraud, and will give effect to any part of the contract which has this object. Nay more, it is from the very advice given in courts of law that the companies have endeavored to protect themselves by those stringent provisions which we so usually find in policies of insurance." *Bunyon*, 1st Ed. 56.

Insurance law being, as Lord St. Leonards suggests, largely "Judge-made law" rather than legislative, these conditions varying in the various policies, in consequence of the efforts of the offices to keep abreast with the court decisions from time to time, were for many years sources of trouble and vexation, eventually leading to the adoption of something more uniform in shape of the National Board form in 1867. (175.) But after the retirement of the National Board from

the control of the fire insurance business of the country, each office seems to have become a law unto itself in the matter of policy conditions, except in those States where "uniform" or "Standard" forms of policies have been adopted, and their use made obligatory upon companies operating within their several jurisdictions; but unfortunately these several "Standard" forms are not altogether uniform or harmonious. (481.)

**171.** In the early days of fire insurance, both in England and America, in addition to the conditions, stipulations, and exceptions embodied in the policy itself, prior to the subscriptions, various other "*proposals for insurance*" are referred to as the basis upon which insurances were to be taken. These *proposals*, now known as "*conditions of insurance*," were formerly printed upon a separate sheet, a copy, enclosed in a wrapper and referred to in the policy as a part thereof, was presented to each insured with his policy. Upon this practice many important decisions of the courts have been predicated. (Sun Fire Office, Policy of 1820.)

The placing of these "*proposals for insurance*" upon the same sheet with the policy was first adopted in this country A. D. 1806, evidently copied from the policy of the Phoenix Fire Office of London, then having an agency in New York. (176, 451 et seq.)

**172.** These *conditions* and *exceptions* have been constantly increasing in number, and bearing upon the rights of the insured until they have provoked comment from the courts, the following, among others:—

"Many of the companies have encumbered their policies with so many conditions, that they can seldom be held responsible for losses, except at their own option."—Chapman, J.

"They are four times as voluminous as the policy itself, and which, if strictly construed, take back nearly all the policy grants, and leave the assured about as empty-handed as he began." Woodward, C. J.

"The modern policy is a *very* complicated contract. Before executing almost any other instrument of equal perplexity, the parties would deem it necessary to take advice of able counsel."—Dutton, J.

For other similar *obiter*, see 4 Ins. Law Jour. 19; *id.* 659; *id.* 36; 6 *id.* 922; 8 *id.* 145.

**172a.** Conditions are treated by the courts as of two classes,—those which enter into and form a part of the contract, and are essential to making it a binding contract, and *stipulations*, which are mutual agreements rather than contracts, as they refer especially to matters that are to be performed after a loss, such as furnishing preliminary proofs of loss, which have no relation to the merits, being simply the consequence of a special condition, and are never required by law outside of the policy. (2 Ins. Law Jour. 619.) The courts view these conditions as of three kinds, viz.: *Conditions precedent*, *Express conditions*, *Implied conditions*.

## CONDITIONS PRECEDENT.

**173.** *Conditions precedent* are those which are to be performed before the obligation commences. It is a warranty that the matter stipulated for *shall be as agreed*, and can generally be exactly performed; and equity will not ordinarily interfere to avoid the consequences of non-performance for any cause. But conditions precedent cannot be established by inference; they must be explicit.

6 Hand O. 454; Bird v. Penn. Mut. Life Ins. Co., 5 Ins. Law Jour. 449, and cases cited; Langel v. Mut. Ins. Co. 17 U. C. Q. B. 524.

Just what particular form of words was necessary to a condition precedent in an insurance contract was formerly the subject of many nice and subtle distinctions; but it is now well settled that an underwriter may, as a rule, prescribe any conditions he pleases to his undertakings, not contrary to good morals, public policy, nor repugnant to the purposes of the contract, (199), and such conditions will be binding upon the parties assenting thereto by the accepting the policy containing them.

Bayly & Pond v. Lond. & Lanc. Ins. Co., U. S. D. C., La., 1875; 4 Ins. Law Jour. 503; Foote v. Ins. Co. S. C., N. C., 4 Ins. Law Jour. 262; 2 Valin's COMM. 44.

If it be a condition that a constant watch shall be kept on the premises, otherwise the policy to be void, if such watch be not maintained, the policy ceases, and no question can arise whether compliance affected the risk in any way. No *laches*

will be permitted, and due diligence must be used under all circumstances of the case.

3 Hill, N. Y., 1<sup>st</sup> 1; 10 Grey, Mass. 306; *Melbride v. Gore* Dist. M. I. Co., 30 U. C. Q. B. 451

**173a.** Whether a contract is to continue operative in the event of performance becoming impossible, is a question of intention of the parties. If there be a condition precedent to do an impossible thing, the obligation becomes single; but however improbable the thing may be, it must be complied with, or the right which was to attach on its being performed does not vest.

**173b.** No degree of hardship will satisfy the rule that "the act of God," rendering the performance impossible, is a defence, and in no case is impossibility an excuse if it refer solely to the personal disability of the promisor, there being no natural impossibility in the thing. ("Act of God," see *Bouvier Law Dicty, Title.*)

*Tait et al. v. N. Y. Life Ins. Co.*, 2 Ins. Law Jour. 808; *Lawrence v. Twentiman*, 1 Bell. Abridg. 450, Cond. G. pl. 10; 1 Penn. Sta. 495; Bos. & Pull. 242; 10 Pick. Mass. 507.

#### CONDITIONS SUBSEQUENT.

**173c.** Conditions subsequent are those where the effect is not produced until after the commencement of the obligation. If void at its creation, or it becomes impossible or unlawful, or in any way void, the obligation remains impact and absolute. (2 Black. Comm. 157; 15 Ga. R. 103.) But equity will interfere where there may have been even a partial performance, or where there is only a delay of performance

*Crabb's Real Prop.*, § 2160; 4 Ind. R. 168; 26 Me. R. 525.

Conditions subsequent are not favored in law, and are not to be raised readily by inference or argument, and only when apt and sufficient words are used for the purpose.

*Laberee v. Carlton*, 57 Me. 212, 213; *Wilkins v. Tobacco Ins. Co.*, 6 Ins. Law Jour. 922; *Merrifield v. Colleigh*, 4 Cush. Mass. 184, 185.

#### EXPRESS CONDITIONS.

**174.** Express conditions are those created by the express words of the contract. Thus a condition of the policy, that the

application upon which it is issued is true, is an express condition ; but such stipulation does not make the application a part of the contract.

Any words suitable to indicate the intention of the parties may be used in the creation of the conditions. "On condition" is a common form of commencement ; nor need such words be in any particular place in the instrument, unless otherwise provided for by law, as in Massachusetts, where the conditions must precede the official signatures. (1 Term R. 645 ; 6 *id.* 668.)

### IMPLIED CONDITIONS.

**175.** Implied conditions result from the nature of the contract, and are such as the law supposes the parties to have had in mind at the time the transaction was entered into, though no condition was expressed. Whatever is fairly implied by the language of the policy is as much a part of it as any express promise. Thus it is an implied condition of the insurance contract that it is free from misrepresentation or concealment whether by fraud or through mistake.

<sup>1</sup> Philips Ins. 47, § 67, and authorities cite ; McBride v. Gore Dist. Mut., 30 U. C. Q. B. 457.

### STATUTORY CONDITIONS.

**175a.** *Statutory conditions* or *codes* are legislative enactments designed to regulate the subjects to which such codes may relate. Several of the United States—New York, Massachusetts, California and Georgia—have such codes, portions of which are devoted to insurance in its several branches. There is also the *Civil Code* of Lower Canada, some chapters of which cover insurance matters, written originally in French, and citing numerous long-forgotten authors as authorities for the different articles.

**175b.** ONTARIO has, in the Revised Statutes of that Province, several chapters devoted to fire insurance, both stock and mutual, Chap. 162 of which is entitled : "An Act to secure uniform conditions in policies of fire insurance," commonly known as "Statutory Conditions," which by § 3 of the chapter "are to be printed on every policy, with the heading 'Statutory Condi-

tions." By § 4, all variations from these conditions are to "be printed in conspicuous type and in different colored ink," and are not to bind the insured unless so distinctly indicated with the caption, "*Variations of conditions.*" These Statutory Conditions are largely composed of the usual conditions of the ordinary fire policy.

The Statutes of Canada, as amended and consolidated by 38 Vic., ch. 20, treats of insurance as regards the fire and inland marine business, but chiefly as to the companies and what is required of them, rather than to policy conditions.

#### GENERAL PRINCIPLES.

**176.** The conditions of insurance, if contained in a paper annexed to the policy, and delivered with it, need not be expressly referred to therein, but are considered *prima facie* a part thereof. (**171.**)

1 Philips Ins. 48, § 71, and authorities cited; Graham v. Stevens, 34 Vt. 166; 57 Me. 170; 2 Ins. Law Jour. 10; Boon v. Beta Ins. Co., U. S., C. C. Dist. Conn.; 4 Ins. Law Jour. 36; Murdock v. Fire Ins. Co., 2 N. Y. 210; Duncan v. Sun Fire Ins. Co., 6 Wend. N. Y. 488; Jacobs v. Equitable F. I. Co., 18 U. C. Q. B. 373.

A condition inserted in a policy, with consent of the parties after subscription, is a part of it. (**1107.**)

**176a.** When the conditions impose restrictive burdens upon the insured, they will be construed strictly against those for whose benefit they are reserved, as they are held to narrow the range and limit the force of the principal obligation. (**1252.**)

6 Ins. Law Jour. 497; (32 New York R. 403); 1 Sumner, C. C. U. S. 434; Duncan v. Sun Fire Ins. Co., 6 Wend. N. Y. 488.

**176b.** These conditions are an integral and controlling part of the contract, whether referred to in the written portion or other part of the policy. They cannot be waived or changed without the written consent of the underwriter or his agent, indorsed upon the policy. Insurers have the right to insist upon the due observance of every policy condition assented to by the insured, by the acceptance of the policy, and are entitled to the benefit of every legal restriction upon their liability provided for in the contract, but no strained interpretation will be permitted.

Rann v. Home Ins. Co., Ohio, N. Y., C. A., Dec., 74; 5 Ins. Law Jour. 15.

**177.** The conditions inserted in the policy of any one company cannot affect or override those in the policy of another company when in conflict upon the same risk. The liability of each company is to be measured only by its own stipulations. "A second policy clearly cannot put the first policy in *duriori casu*."

*Milandon v. West. Ins. Co.*, 9 La. 27, cited 1 Bennett's F. I. Cases 506.

**178.** To give validity to insurance it must be contained in a policy; and the policy *must contain no agreement contrary to the nature of the contract*, Emerigon 25.

*Gee v. Cheshire Mut. Fire Ins. Co.*, S. C. N. H. 1874; 4 Ins. Law Jour. 491, 492; 2 Valin's Comm. 44; 2 Bouv. Law Dict., Title *Repugnancy*.

**179.** It is an easy matter to introduce conditions and stipulations into policies which are valueless in a legal sense from repugnancy; and many of the fire policies of the present day contain exceptional stipulations repugnant to the intent and purposes of the insurance contract. (**172, 199.**)

**180.** In Massachusetts, the law requires that all conditions of the policy, both written and printed, shall precede the signatures of the subscribing officials, and it is held in that State that the stipulation that "this policy is made and accepted in reference to the terms and conditions herein contained and hereto annexed, which are hereby declared to be a part of this contract," does not import into the contract any condition not set forth in the face of the policy. (9 Mass. 420.)

The several conditions of the insurance contract as found in the customary forms of fire policies will be taken up seriatim, using the *National Board form* as the text. Those appertaining directly to losses and their settlement, will be treated in connection with the adjustment of losses.

## CONSTRUCTION OF THE POLICY.

**181.** The construction of the policy, like other instruments in writing, is a question of law, the determination of which belongs exclusively to the courts. "A contract embracing so many interests and parties, and liable to be affected by so many events, cannot but be subject to some difficulties of construction however skilfully it may be drawn." (1 Philips Ins. 5.) (141.)

Harper v. Albany Mut. Ins. Co., 17 N. Y. 194; Washington F. I. Co. v. Davison & Symington, 30 Md. 92, 107, 108; 1 Arnould Ins. 65, 75; 1 Duer Ins. 158, 219; Weskett Ins. 400.

**182.** There is a distinction by the courts in cases where the preparation of an instrument belongs to a party to become liable under it. Such party, it is held, ought to be more strictly dealt with. Insurance contracts come within the principle that "exceptions of risks are to be taken more strongly against the insurer, for whose benefit such exceptions are intended." (176a, 203a.)

Foot v. Aetna Life Ins. Co., C. A., N. Y., 4 Ins. Law Jour. 262; Germania Ins. Co. v. Sherlock, S. C., Ohio, 4 Ins. Law Jour. 538, and authorities cited; American Basket Co. v. Farmville Ins. Co., U. S. C. C., Dist. Va., 8 Ins. Law Jour. 331.

**183.** Stipulations implied by the language of the policy of insurance are as much a part of the instrument as any of its express conditions. (175.) 1 Philips Ins. 47, § 67.

**184.** "Insurances are always presumed to be made in the manner in which they ought to have been made." Emerigon 25.

**185.** All contracts are interpreted by the laws of the place where they are made, except those concerning lands lying in another State, which will be governed by the laws of such State and—except that such contracts as by their terms are to be performed out of the State where made—are to be construed and controlled by the law of the place where they are to be performed.

Thompson v. Ketcham, 8 Johns 189; Clark v. Tucker, 2 Sand. N. Y. 157; Curtis v. Leavitt, 15 N. Y. 9; 1 Philips Ins. 75, § 121; Hyde v. Goodnow, 5 N. Y. 266; 2 Bouv. Law Dict. Title, "*Lex Loci*," 35.

Construction by the courts is of two kinds: *strict* or *literal* and *liberal* or *equitable*.

**186.** A *strict* or *literal* construction limits the application of the provisions of the instrument to cases clearly described by the words used therein. (173.)

**187.** A *liberal* or *equitable* construction is one by which the letter is enlarged or restrained, so as more effectually to accomplish the end in view. (208.)

**188.** When conditions are *liberally* construed, a strict performance is also required; and when a *strict* construction is required a non-exact performance is allowed.

**189.** The leaning of the courts is towards a *liberal* construction of contracts of insurance under any circumstances; and, as was said of conditions, they will be construed strictly against those for whose benefit the reservations in the policy are made. (182, 203a.)

4 Ins. Law Jour. 538, *supra*; Stacey v. Franklin Ins. Co., 2 W. & S., 2 Benn. F. I. Cases 115.

**190.** Where a policy contained the following written clause;

"It is expressly agreed that the assured is to keep eight buckets filled with water on the first floor where the machinery is run, and four in the basement by the reservoir, ready for use at all times in case of fire." *Held*:—"This could not be considered either a condition or proviso, in the policy, but was an express agreement on the part of the assured, and which must be construed like other agreements. The rule for the construction of such an agreement is, that while the assured will not be held to a *literal compliance* with the warranty, as, for instance, in keeping the buckets filled with water, during winter season, when no fires were allowed in the building which might be impossible, and could not have been contemplated by the parties; yet, it is under such agreement, incumbent on the assured, to keep the required number of buckets in good and serviceable condition, at the places designated ready for instant use, a failure to do which should fire occur, would prevent a recovery upon the policy. (4 Ins. Law Jour. 808, § 206.)

## PRINCIPLES OF CONSTRUCTION.

**191.** The principles of construction are, that if the clauses of the instrument be clear and unambiguous, the courts will not admit extraneous evidence to contradict, to vary, or to explain them for "it is not permitted to interpret that which does not need to be interpreted." If, on the contrary, they are ambiguous

or obscure, the courts may resort to any means of explaining them which may be supplied by the rules of common law, the general usages of trade, or the particular circumstances of the case.

1 Arnould Ins. 64, § 41; *id.* 65, citing Lord Eilenborough, in *Robertson v. French*, 4 East, 130; *id.* 78, citing Rule IV. 7 Carr. & P. 701; 3 Kent's Comm. 238, 239; Emerigon 49.

As to "Ambiguity," see 1 Philips Ins. 79, note 1 for authorities; *Fairchild v. Liv. and Lond. Ins. Co.*, C. A. N. Y., 1872, 2 Ins. Law Jour. 115; 4 Ins. Law Jour. 148.

The subject matter of the contract, and the situation of the parties are to be fully considered, with regard to the sense in which the language is used.

**192.** The provisions of the policy are not subject to be contradicted and superseded by evidence of what took place between the parties at the time of making it, or of what facts were known to the agent or underwriter. All previous verbal agreements are merged in the written instrument which must be taken as representing the whole terms of the contract. A contract cannot exist partly in writing, and partly by parole. (**1398, 1426.**)

*White v. Ahton*, 51 N. Y. 280; *White v. Walker*, 31 Ill. 437; *Foxton v. Foxton*, 28 Mich. 159; *Bell v. West. M. & F. Ins. Co.*, 5 Robt. La. 423; *Phoenix Ins. Co. v. Gurnie*, 1 Paige Chy. N. Y. 278; *Union Mut. Life Ins. Co. v. Mowry*, S. C. U. S. Oct., 1877; 7 Ins. Law Jour. 203; *Todd v. Liv. & L. & Globe Ins. Co.*, 18 C. C. C. P. 132.

## THE INTENTION.

**193.** "The subject matter of marine and fire insurance and other mercantile contracts makes it necessary to go out of the written instrument, in order to interpret it, more frequently than in most other contracts. Hence facts and circumstances  *dehors*  the instrument may be proved to discover the intention of the party; but the courts are always cautious of going out of the policy for evidence as to its construction. 1 Phil. Ins. 73, § 119.

"A policy of insurance or any other written contract" must be taken in the sense in which the parties respectively and reciprocally were authorized to intend and understand it, and no other construction can be put upon it by means of parol testimony. 1 Philips Ins. 75, § 122. The italics are his.

1 Philips Ins. 75, § 122. The italics are his.

**194.** *Actual intention of the parties is the controlling principle from which all special rules of interpretation flow, and to which they are all subsidiary and subordinate. Hence all contracts are to be construed so as to give complete effect to the intention of the contracting parties, when this can be done consistently with the rules of law, but it must be the intention expressed.*

Wesket Ins. 299, cites Roccus and others; 1 Philips Ins. 74, 75, 76.

**195.** "The true principle of sound ethics is to give the contract the sense in which the person making the promise believed the other party accepted it, if he did in fact so understand and accept it."

2 Kent's Comm. 557; 3 *id.* 258, 9, n. 6. 1 Philips Ins. 78, § 131, and numerous authorities cited, n. 4; 1 Duer Ins. 211; 1 Arnould Ins. 65, note c.

**196.** While the "intention of the parties is the pole-star of construction," the intention must be found expressed in the contract, and be consistent with the rules of law. The court will not make a new contract for the parties; nor will words be forced from their real significance. When the terms of the policy are all clearly defined, they are held to contain the true intent and meaning of the parties and will be so construed. See authorities *supra*.

**197.** The predominant intention of the parties in a contract of insurance is indemnity (**1650**); and this intention is to be kept in view and favored in putting a construction upon the policy.

**198.** "One cardinal rule (in construction) requires that words and phrases shall be taken in their ordinary popular sense, unless they appear to have been used in a different sense." See *Howard Ins. Co.*, 52 N. Y. 502; 2 Ins. Law Jour. 769.

**199.** In this connection reference is made to the opinion of Judge CARPENTER in the reversal of the case of *Lyons v. Providence-Washington Ins. Co.*, Sup. Ct. of R. I., October Term, 1882, where the point at issue was the construction of the phrase "Contained in," (**1288**.)

PRINTED CONDITIONS *vs.* WRITTEN WORDS.

**200.** "But these printed clauses are not in every instance to be construed to the letter; they may be interpreted according to law and custom." \* \* \* \* "But where there is no contradiction between the two, the printed clauses must stand and have the full effect of their terms, because they have been adopted by the parties." (Emerigon. sec. III, § 33, citing several old text writers and policy forms.)

**201.** Where the written and printed clauses of a policy are inconsistent with each other, one of them must give way. Hence, in determining the construction of written instruments consisting of a printed form, the blanks of which are filled in manuscript, the words superadded in writing are entitled to have a greater effect attributed to them than the printed words, and may supersede them, inasmuch as the written words are the immediate language and terms selected by the parties themselves for expressing their meaning, and are necessarily inserted from design. The printed words may not express the intention of the parties; the written certainly do. "It is permitted to derogate from the printed clauses; and one is judged to derogate from them, from the fact alone that the written clauses are repugnant to them." Emerigon 33, Livingstone v. West, Assur. Co., 14 Grant 71, 20 U. C. Q. B. 607.

Reynolds v. Commercial Ins. Co., 2 Ins. Law Jour. 33

**201a.** If the written clause varies from the printed, it is evidence of a special contract made in a particular case, different from the usual contract of insurance; and it must necessarily be considered as the *real* agreement of the parties. If the written and printed clauses can be reconciled by any fair construction, it ought to be done; if they cannot, the former must prevail. (1 John. Cases, 1; Angell Ins. 12.) (1225.)

**202.** Where the printed conditions of the policy stipulated that it would not be liable "for any loss or damage caused by, or consequent upon, the bursting or collapsing of a steam-boiler or steam-pipe," while the written portion specifically covered the steam engine upon the premises. *Held:* "The written clause must prevail; and the underwriter was liable, although

the fire which destroyed the property covered was caused by explosion of the steam-boiler, the use of the steam engine involving the use of the boiler, the risk was a part of the peril insured against." (*Harper v. Albany Ins. Co.* 17 N.Y. 198; *Harper v. N.Y. City Ins. Co.* 22 N.Y. 441.)

**202a.** In the case of *Ervin v. N.Y. Centr. Ins. Co.* (3 N.Y. Sup. C. 213), it was held that "the fact that the provision was in fine print and was not discovered by the holder of the policy until after the property had been burned, did not deprive the insurance company of the benefit of such provision." (**1252, 1264.**) *Ins. Co. v. Slaughter*, 4 Wall. U. S. 404.

May Ins. 184; Wood Ins. 148; 1 Parsons Ins. 65, subject; *Delonguemare Tradersmen's Ins. Co.*, 2 Hall 588; 1 Bennett's F. I. Cases, 307

## OF TERMS OR WORDS USED.

**203.** The terms used in the insurance contract are, for the most part, those in ordinary acceptance among business men, and should be construed in the sense which the known usage of trade or practice among underwriters has given them (**207, 1252.**)

*Wall v. Howard Ins. Co.* 14 Barb N. Y. 383; 1 Duer 161, 162, 164; 1 Parsons Ins. 17; 1 Phelps Ins. 86

When words are manifestly inconsistent with the declared purpose and object of the contract, they may be rejected, or when words are omitted so as to defeat the effect of the contract they will be supplied by the obvious sense and inference from the context; and when words admit of two senses, that which gives effect to the design of the parties is preferred to that which destroys it; and it is held that, where there is an expression in a policy capable of two equally reasonable interpretations, that one must be adopted which is more favorable to the insured, for the language of the policy is that of the insurers; and if they have left their design doubtful by using obscure language, the construction will necessarily be unfavorable to them. In this connection Lord BACON says: "It is a rule not to be resorted to, nor to be relied upon, but when all other rule or exposition fail." (4 Ins. Law Jour. 260.)

**204.** A court in selecting among different meanings of which the phraseology is susceptible, will avoid such as are absurd, or lead to unreasonable or inconvenient consequences, or would render the insurance illegal or void. (9 Ins. Law Jour. 187.)

## FORFEITURES.

**205.** "Forfeitures are odious to the law, and in enforcing them, courts will never search for that construction of language which must produce a forfeiture, where it will bear another reasonable construction which will not produce such result."

The right to insist upon a forfeiture for breach of condition is *stricti juris*; and liberal intendments and enlarged construction will not be indulged in favor of such forfeitures. They must be brought strictly within the forfeiting clause, and will be enforced only when there is the clearest evidence that that was what was meant by the stipulations of the parties.

*Seamans v. N. West, Mut. Life Ins. Co.*, U. S. C. C., Minn., citing *Ins. Co. v. Wolf*, 95 U. S. 326; *Ins. Co. v. Eggleston*, 96 U. S. 572; *Ins. Co. v. Norton*, 96 U. S. 234; *Ins. Co. v. Robertson*, 59 Ill. 123; *Ins. Co. v. Pierce*, 75 Ill. 420; *Ins. Co. v. Warner*, 81 Ill. 410; *Mayer v. Ins. Co.*, 38 Iowa 304; *Thompson v. Ins. Co.*, 52 Mo. 469; *Park v. Phoenix Ins. Co.*, 19 U. C. Q. B. 110.

**206.** In all cases of forfeiture equity will relieve if compensation can be made, and the default be only in time. \* \* When, from the nature of the agreement, the forfeiture is only intended as security that the consideration shall be performed, a court of equity may relieve, for, notwithstanding they do so, they give the party that which he stipulated to receive, and therefore no injury is done. But when the relief would destroy the substance of the contract, relief cannot be granted, for no precise value can be affixed to such act. (*Hartford Ins. Co. v. Walsh*, 54 Ia. 164.)

**206a.** A party having the right to declare a forfeiture, must exercise that right when called upon to act under the contract. He cannot recognize the contract as binding and afterwards insist upon the forfeiture. (9 Ins. Law Jour. 922; 9 *id.* 502, 627.)

## CUSTOM ; USAGE.

**207.** The construction of all written instruments is subject to be affected by *usage*, though it can be resorted to only where the law is doubtful and unsettled; and even then the construction must be determined by the *usage*, and not by the opinions of witnesses. "Custom has no weight when inconsistent with equity."

**208.** In giving *construction* to policies, there is more than ordinary reference to *established usages*; and those, when ascertained, and found suitable applications of general principles, or not inconsistent with them or with the tenor of the contract, are considered authoritative upon the parties. And, for this reason, the contract of insurance is said to have a *liberal construction*. But a general *usage*, the effect of which is to control *rules of law*, or which contradicts a settled rule of commercial law, is inadmissible.

**209.** The evidence of *usage* is received for the sake of ascertaining the sense of the parties by their contract made with reference to such *usage*; for the custom then becomes part of the contract.

"Jurisprudence," says Mr. PHILLIPS, "abounds in illustrations of the meaning of words and phrases used in contracts, being determined by evidence of *usage*."

**210.** *Usage must be reasonable, uniform, certain, and conformable to law, as well as applicable to fire insurance.* It may be admissible to explain *what* is doubtful; it is never admissible to contradict what is plain and free from ambiguity; otherwise parties may be arbitrarily held to mean differently from what they have written; *nor can usage be effectual to render void an express contract for a valuable consideration.*

**211.** The rule of evidence in regard to *usage* is the same in policies of insurance as in other contracts; it is admitted to explain and interpret the policy, but not to control or contradict its obvious meaning, nor to alter or oppose a general principle or rule of law. The courts will not readily adopt these *usages*, because they are, not unfrequently, founded on mistake. Justice STORY says: "Such proof is always to be

admitted with cautious reluctance, and to be watched with scrupulous jealousy."

**212.** In *ambiguous* portions of the insurance contract, *usage* is sometimes permitted to control as to the intent of the parties, not unfrequently modifying the wording of the policy; but, to be binding upon the underwriter, such *usage* must be *definite, general, uniform, and well established*, and full proof of such *usage* is an indispensable requisite to its admission.

**213.** If *usage* be not directly known to the parties to the contract, it will still be binding upon them, if it appears to be so general and well established that knowledge of it may be presumed.

**214.** Terms of trade are presumed to be used in the meaning of the trade; and the *usages* of the trade are expressly included in the policy, since the meaning or describing of a risk comprehends the *usages* incidental to it.

**215.** *Insurers are presumed to know the usages of trade*; and when a term is used having a limited meaning in the trade, and in a policy issued to one in that trade, or in one closely connected with it, both parties must be assumed to have understood the term in the sense in which it is used in such trade. Evidence to prove such usage is always admissible.

**216.** *Common words and phrases* in contracts of insurance are presumed to be *used in their ordinary meaning*. If a word or phrase be used, not belonging to the common vernacular language, its meaning must be determined by evidence introduced for that purpose.

**217.** The meaning of *technical words*, or common words, and phrases used in a technical or local sense, and of words other than the common words of the language, is for the jury.

**218.** Proof of *usage* among commission merchants, in the matter of insuring goods consigned to them, is held to be admissible.

**219.** A *general usage* may be superseded by a *local usage*; but *local custom or usage* among underwriters, not communi-

cated to the insured, nor of such notoriety as to afford any presumption of knowledge on his part, is not admissible.

**220.** A distinct, additional, independent stipulation, not comprehended in or covered by the language of the policy, cannot be introduced into it by proof of *usage*.

**221.** Proof of *usage*, as to the meaning of words, *must be by facts*, such as instances of its observance.

**222.** The *true test of usage* is its having existed a sufficient length of time to have become generally known, or warrant a presumption that contracts are made in reference to it.

1 Philips Ins. 79, § 123, et seq.; 1 Arnould Ins., 66, et seq.; 1 Duer Ins. 180, 226; Hopkins Mar. Ins., 428; 2 Bennett F. I. cases, 585; Vanhearth v. Turner, Winch 21; Vanness v. Pacard, 2 Pet. U. S. 148; Gordon *et al.* v. Little, 8 S. & R. 533; Snowden *et al.* v. Warden, 3 Rawle 101; McMaster v. Penn. R. R., 10 P. F. Smith 374; 27 *id.* 286; Smith v. Right, 1 Caines, R. 43. McGivern v. Prov. Ins. Co., 4 Allen N. B. 64.

## VARIOUS KINDS OF INSURANCE.

### JOINT-STOCK OR PROPRIETARY INSURANCE.

**223.** *Joint-stock companies* are usually incorporated, either under general laws, or by special enactments, with a specified amount of capital, limited by the act of incorporation, divided into shares subscribed for and owned by stockholders or *proprietors*, and transferable by them like other stocks, but liable for the debts of the corporation. Such stock may be either paid up in full, or part in cash and the remainder in notes, subject to call at any time, as set forth in the charter.

Unlike *mutual insurance*, the business is entirely at the risk of the proprietors, and for their own profit or loss, as the case may be; and in case of insolvency the liability of the stockholder is *usually* limited by the amount of stock held by him at the time of such insolvency. In some states, laws have been passed, making stockholders liable for *double* the amount of their stock subscriptions; and in others shareholders are made *individually liable* for the debts of the corporation in excess of the ability of its subscribed capital to pay.

A stock policy is issued solely upon the credit of the company's capital, to one who may be a stranger to the corporation, who acquires no rights of membership by reason of his policy, nor right to partake in the profits, and subjects himself to no liability by reason of its losses. The payment of premiums is a private matter of agreement between the parties. The liabilities assumed by the company, and the terms and stipulations under which the policy is issued, are matters of condition and agreement which are ratified by the insured's acceptance of the policy as written.

## MUTUAL INSURANCE.

**224.** All schemes of insurance, other than joint-stock, are mutual, that is, where members of the company stand simultaneously in the dual relation of corporator or insurer and insured; under the latter he becomes liable for his quota of *all* expenses and losses—his own amongst others—occurring during his full term of membership.

N. H. Mut. Fire Ins. Co. v. Rand., 4 Foster (24 N. H.) 428; Swamscot Mach. Co. v. Partridge, 5 Foster N. H. 369; Bay State Mut. F. I. Co. v. Sawyer, 12 Cush. 64; Indiana Mut. F. I. Co. v. Coquillard, 2 Ind. 645; May Ins. 18, 19.

**224a.** There is no subscribed capital in mutual insurance, all losses and expenses being met by assessments upon the members, either at regular periods or upon the occurrence of each loss; hence there is no necessity for the fixing of rates in advance; the object of the association being to avoid losses by the selection of the safer classes of risks, and thus reduce the quotas to a minimum.

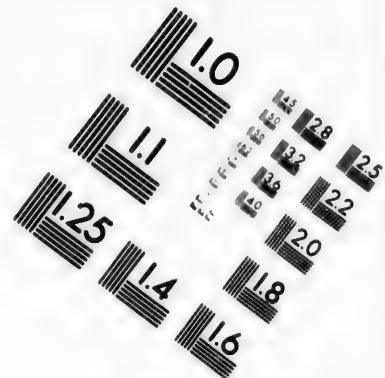
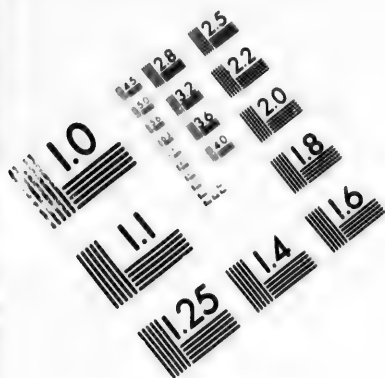
The premium paid is usually a sum in cash at the outset, and a *deposit note* apportioned to the amount of the insurance; which note, in general practice, becomes a lien or mortgage, upon the *land* as well as upon the dwelling thereon, when covered by the policy; and while in force is liable for any pro rata assessments that may be made thereon by the company, to its full extent, or even more, when required, for payment of expenses and losses.

People's F. I. Co. v. Hartsborne, 3 Norris, Pa. 455; Halfpenny v. People's F. I. Co., 4 Norris, Pa. 48; Russell v. Berry, Sup. C. Mich.; Cary v. Nagel, 2 Biss. 244.

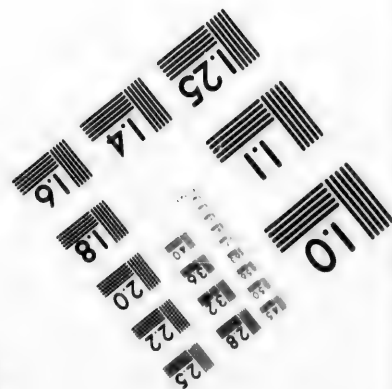
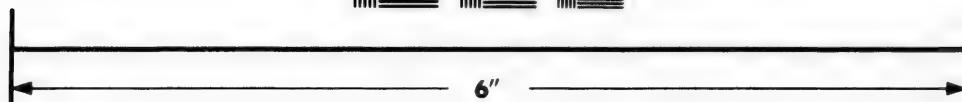
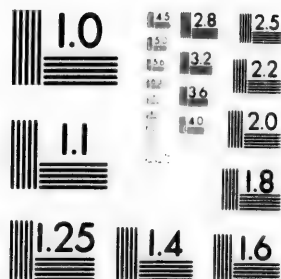
**225.** In the Province of ONTARIO, under the law, 36 Vic. ch. 44, § 69: "No premium note or undertaking shall create any lien upon the *land* on which the insured property is situated."

"No member of any mutual insurance company, to whom this act may apply, shall be liable in respect of any loss or other claim or demand against the company, otherwise than upon and to the extent of the amount unpaid upon his premium note."

Statutory Conditions of Ontario, secs. 45 *et seq.*; Rev. St. Ontario, ch. 181



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**226.** Under the "*Consolidated Statutes of Lower Canada*," § 24, ch. 68: Every member of a mutual insurance company is made liable to an extra assessment, when needful, of two dollars upon every four hundred dollars of insurance carried upon his property; and in the case of *Hochelaga Mut. Ins. Co. v. Lefebvre*, Montreal, S. C., where the premium had been paid in cash on taking out the policy, the insured was held liable for further assessment under this law. See also Civil Code L. C., § 2471; C. W. 4, c. 33, § 9; 4 W. 4, c. 33, § 19.

**227.** *Cash payments of premiums*: Some mutual companies accept cash payment of the premium in full, without notes. This has raised the question, whether the notes given by other members of the company can be assessed to pay losses under such cash policies. The uniform decisions of the courts where the question has been adjudicated upon is in the affirmative, upon the plea that the cash premium may as well represent the insured in the common fund as the premium note, which is the doctrine of the *Hochelaga Mut. Ins.* case above cited.

*Lehigh Valley F. I. Co. v. Schimpff*, S. C. Pa.; *N. Am. F. I. Co. v. Commonwealth*, same court; *Union Ins. Co. v. Hoge*, 21 How. 64; *Brower v. Appleby*, 1 Sandf. N. Y. 156; 10 Ins. Law Jour. 507; *Rhineland v. Ins. Co.*, 4 Cranch. 29; Stat. Cond. Ont., § 55.

**228.** *Insolvent Companies.* The plea of insolvency of the company is inadmissible as a defence to an action upon a premium note. It is a French adage that "a mutual insurance company can never be insolvent."

*How v. Allen*, 1 Sandf. N. Y. 171, n.; *Brown v. Crooke*, 4 N. Y. 51; *Sterling v. Merc. Mut. Ins. Co.*, 22 Penn. St. 75; *Gray v. Simons*, 58 Ill. 444; *Bidaud v. Wales*, 19 Me.; *Clarke v. Middleton*, 19 Mo. 53; *Phoenix Ins. Co. v. Deau*, Ont. Div. Court, made a test case.

**229.** The assessments of mutual insurance companies, collected for the payment of a certain loss claim, are subject to attachment by other creditors while yet in hands of the company.

*Hays, Endorser of 8th Avenue R. R. Co., N. Y., v. Lycoming Ins. Co., S. C., Penn.* (premium was paid in cash), citing *Peterson v. Sinclair*, 2 Norris, Pa. 250, and authorities quoted.

**230.** *Personal property* is exempt from levy for unpaid premiums. Liens, or judgments in such cases, are restricted to

the real property included in the policy. But a part of the risk being upon personal estate will not prevent the filing of a lien upon the real estate.

*People's Fire Ins. Co. v. Hartshorne*, 3 Norris, Pa. 453 ; *Halfpenny v. People's F. I. Co.*, 4 Norris, Pa. 48.

**231.** *Membership* dates from the consummation of the contract of insurance ; a member is not liable for expenses or losses of the company prior to that time ; nor after the cancellation or expiration of his insurance ; but he will be liable for his pro rata of such claims arising during the currency of his membership.

*Lycoming Ins. Co. v. Wood*, 8 Ins. Law Jour. 807 ; *Eilenborough v. Protection Mut. Ins.*, 89 Penn. 464 ; *Van Slyke v. Trempleau Co. Ins. Co.*, 48 Wis. 693 ; 10 Ins. Law Jour. 551 ; Civil Code L. C., § 2471.

Members are presumed to have a knowledge of the charter and by-laws of their companies.

*Mutual F. I. Co. v. Miller Lodge, etc.*, S. C. Md. Stockett's R. No. 58.

**231a.** *Mutual companies may cancel* policies upon giving due notice and returning insured's premium note after payment of all assessments for losses and expenses to date of cancellation. Members may cancel upon the same terms.

*Columbia Ins. Co. v. Masonheimer*, 76 Penn. St. 138 ; *Emmott v. Slater Mut. Ins. Co.*, 7 R. I. 562 ; *Coles v. Iowa State Mut. Ins. Co.*, 18 Iowa 425 ; Stat. Cond. Out., § 54.

**232.** *Guarantee capital*: Some of the *mutual companies* transact business upon the *stock* and *mutual* principle combined. Certain of the members of the company, who may or may not be insured therein, contribute a certain amount of capital called *guarantee capital*, for which they hold certificates of shares, and are entitled to a stipulated interest, or to an agreed share of any surplus receipts after the payment of expenses and losses, at certain periods.

**233.** Mutual insurance is practised in different localities under various forms, known as those doing business with a joint stock capital, those with a guarantee capital, those purely mutual, or mixed cash and mutual, and farmers or club mutuals. In whatever form they operate they fall under the

general term mutuals, and are controlled by the same general principles.

**231.** *Factory mutuals* is a name given to an organization of nineteen mutual companies of the New England States,—hence frequently designated as the “New England Mutuals,”—whose membership is entirely composed of owners of the principal cotton, woollen and other mills of the less hazardous class of factory risks of that section chiefly.

The object of the association is to reduce the hazard of mills to a minimum by the introduction of approved fire extinguishing facilities, and thorough inspection of each risk at frequent intervals. No manufacturer can be admitted to membership until his factory has been inspected and fitted up to the required standard, not unfrequently obligating heavy outlays of time and money, which expenditure may be regarded in the light of premium paid in advance. This association writes heavy lines upon factory risks, but from their thorough protection against fire, any losses that may occur are unfrequent and comparatively light in amount, thus enabling the declaring of large dividends—return of over-paid premiums—each year to the membership.

A similar organization of mutuals is in existence at the West, and evidently in a prosperous condition.

*Class mutuals*: The success of the factory mutual system, and their unwillingness to write upon some of the more hazardous classes of special hazards, has led to the formation of a number of mutual organizations for self-protection in the several lines of business. Among them, already operating, are: the *Miller's Nat. Ins. Soc.*; the *Rubber Manufacturers Mutual*; the *National Druggists Association*, and others projected, all, except the first named, being of quite recent organization. Time enough has not yet elapsed to indicate what will be the eventual outcome of these several associations. Success or defeat will depend largely upon management, and whether enough business will be afforded to each venture to create a sufficiently broad average for the safety of the company.

## PARTICIPATION INSURANCE.

**235.** The leading feature of this plan is to accumulate from the profits of the business a *surplus fund*, represented by *scrip certificates*, bearing interest. The portion of the surplus thus set apart representing profits cannot be disposed of in dividends to *stockholders*. As soon as the scrip issued to policy holders reaches an amount equal to the capital, all further surplus profits are to be applied to the redemption of scrip, in the order of its issue.

The right to participate in the profits does not constitute an insured a partner with the proprietors of the company.

**236.** The following is the plan for

## DIVISION OF PROFITS.

Parties holding policies of this company with these provisions thereon may participate in the **net profits** of the business of the company, to the extent of **three-fourths**, or *seventy-five per cent.* thereof, as hereinafter provided; except when the words "*This policy does not entitle the holder to participate in the profits,*" or words of similar import, are endorsed on any policy, in which case the holder of **such policy** shall not be entitled to any such participation.

**FIRST**—Within one month after the expiration of each year commencing from 1st of —, 18—, the profits of the business for the year shall be ascertained, in order to divide and distribute the same to the company and policy-holders according to their respective interests therein. These profits shall be determined in the following manner:—

Interest at the rate of seven per cent. per annum, upon the capital, \$500,000, and upon whatever amount of surplus, not belonging to or set apart for policy or scrip-holders, and then remaining undivided, shall be the first retained and set apart as the property of the company. The balance of interest received or accrued during the year on loans, including the discounts on losses paid before maturity, and the amount of premiums earned during such year shall then be ascertained, and the sum of these shall be considered the gross receipts.

The general expenses, taxes, losses, and the interest paid or payable to scrip-holders, and all other contingent charges and liabilities, shall be considered gross expenses; the gross expenses being deducted from the gross receipts; the balance shall be considered the profits of the business for the year, and this estimate shall be binding and conclusive upon all parties entitled to participate in said profits.

**SECOND.**—One-fourth of the ascertained profits as aforesaid shall be annually paid to the stockholders in cash, and three-fourths of the said

profits so ascertained shall be divided to policy-holders, and scrip shall be issued to them for such sums as they shall be respectively entitled to, in proportion to the amount of premium paid by each, which scrip shall be entitled to such interest, not exceeding six per cent. annually, as in the judgment of the Board of Directors the business of each year shall warrant, but no scrip shall be issued for any fractional excess over even fives of dollars, but scrip may be issued for three dollars or four dollars, in case the amount to which a policy-holder shall be entitled shall equal one of these sums, and be less than five dollars.

THIRD.—The fund represented by the said scrip shall be applicable to its entire extent, if necessary, for all losses and expenses exceeding the earned premiums of any year, each later annual issue of scrip to be first reduced or wholly canceled, before any previous annual issue is reduced, and all the annual issues are to be canceled before the capital of the company, or any portion thereof, shall be applicable to such losses, and the Board of Directors shall have full power to apply said fund and cancel said scrip, for the purposes and in the succession aforesaid, as the exigencies of the company may require.

FOURTH.—The scrip shall be redeemable as follows: whenever the fund represented by said scrip shall exceed *Five Hundred Thousand Dollars*, the Board of Directors shall thereafter apply the excess of said fund, annually, towards the redemption of such scrip, commencing with the earliest in date. Notice of the redemption of the scrip shall be given for ten days, in two daily newspapers, published in the city of New York, and no interest shall be payable on such scrip after the time mentioned in said notice for the redemption thereof.

FIFTH.—By holders of policies is intended, not only the party in whose name the policy is issued, but also the party to whom the same is assigned or to whom the loss is made payable, and the scrip for the amount, to which the premium paid entitles the holder, may be issued to either, at the option of the company.

SIXTH.—All amounts, the scrip for which shall not be taken before the time of making the second division after the division of such scrip shall be forfeited, and such amounts shall be the property of the company.

**237.** The other conditions of the policy are the same as in the ordinary stock form. This class of insurance was usually limited to the better class of risks, and then only at premiums rating about *ten* per cent. above the non-participating policies.

**238.** Some of the large mutual marine companies divide scrip upon a somewhat similar plan; and in the aggregate transactions of a heavy shipping house, the amount of scrip thus earned frequently reaches a large sum, and it has been the custom for the shipper to insure for the owner and retain the scrip as his perquisite.

**239.** An agent of a western railroad company was employed to purchase rails in England, and ship them to this country. The cargo arrived safely; but in settlement of accounts between agent and principal, the latter was charged with the insurance premium in full, whereas the agent had received scrip dividends upon the insurances amounting to \$2,800, which was claimed by the principal, but resisted by the agent under a rule established by the New York Chamber of Commerce. The New York Commission of Appeals, however, held that "where insurance scrip is realized by an agent upon transactions undertaken for employers, it belonged to the principal, and is simply a repayment of an excessive rate of premium." (*Minnesota R. R. Co. v. J. P. Morgan & Co.*)

**240.** This plan of insuring originated with the late Duncan F. Curry, Secretary of the Republic Fire Ins. Co. of New York city, in the year 1853 (*United States Gazette*, vol. 10, p. 134), and was for many years practiced by a number of the New York city fire companies, the most prominent of which was the "Continental," which company commenced the issue of scrip in 1857, and, in 1864, redeemed the issues of 1857 and 1858 at par, and continued to redeem the scrip of one or more years annually, until the occurrence of the Chicago fire of 1871, when the losses of the company, some \$1,200,000, were paid entirely out of the scrip accumulations and surplus, leaving the capital intact.

The heavy losses of the Boston fire, 1872, seem to have put an end to the participating plan of fire insurance.

#### PERPETUAL INSURANCE.

**241.** As the term indicates, *perpetual* insurance is continuous insurance, without limit as to time, upon the payment of a single premium or *deposit*, the amount of which is usually fixed at about ten annual premiums for the same risk.

**242.** The rate for the *permanent insurance* of first-class brick dwellings in the city of New York is two and a half per cent., and for other buildings more in proportion. The

interest upon the deposits is the annual premium; this low rate is ample evidence of the very safe character of the risks assumed.

The basis of the *deposit*, as an indemnity, rests entirely upon the cumulative principle, as in life insurance, the interest furnishing the funds for expenses and losses upon the supposed average of many years at compound interest. It is cheaper to the insured than term insurance; the cost to the underwriter is about the same, though usually not adequate at the commencement, except under unusually favorable circumstances; but it becomes remunerative by length of time.

Upon cancellation of the policy by the insured, the deposit was returned less a deduction of *five per cent.*, which was regarded as a fee. If the cancellation be made by the company, the deposit is returned in full. This has now been changed, requiring a notice of intended cancellation from ten to thirty days in advance, and the deduction now made is *ten per cent.*

**243.** *Permanent policies* have been in use in Philadelphia for almost a century past, where very many of the buildings are insured in this manner. The first perpetual policy issued was from the office of Mutual Assurance Co. (**85**) on September 10, 1801. The Philadelphia Contributionship (**78**) did not issue these policies until April, 1810. The first stock office to issue perpetual policies was the American Fire, Philadelphia, March 10, 1812.

**243a.** The Insurance Company of North America, The Insurance Company of the State of Pennsylvania, The Pennsylvania Insurance Company, the Franklin, and other fire offices of Philadelphia, carry heavy lines of perpetual insurance. The Insurance Company of North America has adopted the practice of maintaining a bank credit equal at all times to its perpetual deposits. The Pennsylvania Insurance Report of 1888 gives the following figures of perpetual business for that year:—

Nineteen companies wrote \$20,716,583; Deposits thereon \$450,000; Losses paid \$102,259; Risks in force \$304,903,953; Deposits held thereon \$7,504,627.

Some, if not all of the English companies having agencies in this country, insure perpetually.

**244.** *Perpetual policies* are issued only upon selected risks—brick or stone buildings—dwellings preferred, or upon ground-rents, mortgage, or other liens upon such property. Frame buildings are never so covered.

In case of *total loss* of the property the policy is thereby cancelled on payment of such loss. In cases of *partial loss*, the amount paid is deducted from the amount insured, as in term policies; but the deposits, or so much thereof as may be necessary to pay such partial loss, is *sunk* for the benefit of the company, that is, not liable to be repaid on cancellation.

**245.** While the form of the body of the perpetual policy is not essentially different from the ordinary stock policy, it does vary essentially in several particulars, to meet the varying requisites of the contract. They are briefly as follows:—

- Sec. 1.* Refers to the deposit, with policy and survey fee not less than three dollars.
- Sec. 2.* Survey of building, if within convenient distance from the office, will be made by the company's surveyor. If not convenient to an agent's office, the survey is to be made by a competent person at the insured's expense. "Such person to make oath or affirmation to the correctness thereof," and must be signed by the applicant.
- Sec. 3.* As to increase of risk, as in ordinary policies.
- Sec. 4.* As to title, etc., including also the mortgagee clause, with subrogation as customary. (738.)
- Sec. 5.* As to assignment or sale; must be noticed to the company, or deposit money not demanded within sixty days after sale of the subject of the insurance is considered sunk for the benefit of the company.
- Sec. 6.* As to duration of policy; holder may cancel and reclaim deposit money within three days (since changed), less a deduction of five per cent. (now ten).
- Sec. 7.* Company may cancel at any time, after giving thirty days' notice, and "the deposit money returned without deduction upon surrender of the policy."
- Sec. 8.* Where property under insurance shall be sold, the policy to be void unless assigned to vendee at the execution of the deed, and brought to the office for approval within thirty days thereafter. The company to approve the assignment or not, at their option; if not approved, the deposit to be repaid as in sec. 7. Assignment fee 50 cents.
- Sec. 9.* In the event of death of the insured, the policy to be held by the executor or administrator in trust, for heirs or devisees; provided that notice is given within twelve months, with names of the heirs

and devisees, which shall be endorsed upon the policy, and as in assignments, sec. 5. Any assignment by executor or administrator must be with consent of persons named in such declaration.

Sec. 10. Other insurance without consent of the company in writing, as soon as possible thereafter. The ordinary contribution clause, (1901.) Where the insurance is upon ground-rent, mortgage, or other lien, there shall be no liability to contribute with any insurance directly made upon the premises so mortgaged, or charged.

Sec. 11. Loss or damage; immediate notice to be given, with production of the policy, etc., as customary. If insurance be upon a building, company will repair same, commencing within twenty days from time of notice; or if loss be less than amount insured, within thirty days; or if up to the amount insured, within ninety days after the amount of loss shall have been mutually agreed upon, or pay the estimated value thereof, ground-rent, mortgage or other liens, losses paid in ninety days.

Sec. 12. Partial losses: when paid for or repaired, the property remains under the insurance for the balance *only* of the original sum insured, and the deposit money for *all* damages or losses paid or repaired shall be considered as sunk for the benefit of the company, and in case of payment or repair of total damage or loss, the policy shall be surrendered for cancellation.

Sec. 17. Buildings intended to be occupied otherwise than as private dwellings will require a larger sum to be deposited, according to the greater or less hazard of such occupancy; this policy, therefore, will not be construed to cover any such increased hazard, unless liberty be given therefor, and indorsed on the policy, in conformity with the subjoined classification of hazards.

**246.** Perpetual insurance deposits cannot be divided out in any shape; they must be invested in convertible securities, as the deposit is liable to be called for at any moment, and is to be refunded at short notice; hence, only the interest can be used as dividends. So that the company, like a bank, is subject to a *run* by its depositors, upon the slightest alarm, as happened to the Enterprise Insurance Company of Philadelphia, whose depositors became alarmed in consequence of the "Chicago fire;" the result was the closing of the company, as its investments were not in a shape to meet the sudden call—three days' notice only—without heavy sacrifice.

**247.** In this connection the *American Exchange and Review* says:—

"That withdrawable deposits for perpetual fire-risks—an incongruous union of the insurance and trust business—is wrong in principle, was long ago declared; that an office is liable to be run upon like a bank in specie-pay-

ing times is an old warning, yet practically this mode of insurance has been attended with such advantages that all objections to it seemed visionary."

"That to place the indemnity fund of the insured subjects within the jeopardy of a common fire contingency \* \* \* is not the perfection of insurance wisdom, may be readily conceived; yet the plan has built up some of the most respectable Philadelphia fire offices."

"The Enterprise goes down under a prospective demand reclaiming perpetual deposits, the forbearance of a part of the perpetual policy-holders not being seconded by others; and so the heretofore practical security of the system is greatly undermined, and what was before conjecture is now fact."

See Fowler's History of Insurance in Philadelphia for two centuries for a full description of Perpetual Insurance.

### THE "INSTALLMENT NOTE" PLAN.

**248.** Upon this plan, farm property, dwellings, and private barns in towns, and their contents, churches and school-houses, are covered by policies running for five years. The premium is divided into equal annual installments, the first of which is paid in cash at the time of effecting the insurance, and for the others there is given a note of the insured, payable by installments in one, two, three, and four years respectively, from the first day of the month in which the application is taken, without interest. As the installments become due, the insured is notified by letter at least ten days in advance; he may remit the installment by mail or express at the company's risk. *The first year's premium goes to the agent, as his commission.*

The note is attached to a form of application, duly signed by the insured, and contains the following, over his signature:—

"If any installment upon the premium shall remain due and unpaid thirty days, then the policy issued upon this application, in consideration of such installment, shall be null and void until the same is paid."

**249.** The following is the form of the note:

(The Secretary is authorized to number this Note.)

§.....FOR VALUE RECEIVED, In Policy No.....dated the.....  
day of.....18—, issued by the.....INSURANCE COMPANY,  
of.....promise to pay said Company the sum of.....Dollars  
and.....Cents, on the first day of.....18, and.....Dollars  
and.....Cents, on the first day of.....18, and.....Dollars  
and.....Cents, on the first day of.....18, and.....Dollars  
and.....Cents, on the first day of.....18, without interest and  
without any relief whatever from valuation or appraisement laws.

.....Insured.

Date.....

**249a.** The following is the form of receipt given by the agent to the insured :

RECEIVED OF.....  
*an application for Insurance by the..... INSURANCE*  
*COMPANY, of..... on property to the amount*  
*of \$..... for the term of ..... years*  
*subject to the approval of said Company; Also, an Installment Note for the*  
*payment of Premium as represented on the back of this receipt; Also,*  
*\$.....*

*Dated at..... this..... day of..... 18*

*..... Agent.*

**249b.** The following is the indorsement upon the receipt as therein referred to :

You have paid the sum of \$..... for first installment upon your premium, and for Policy and Survey Fee; also given a note of four installments, due as follows :—

\$.....	due on the first day of.....	18
\$.....	" " "	18
\$.....	" " "	18
\$.....	" " "	18

You will receive a printed Notice before each installment falls due, and will be furnished with a blank Envelope duly directed, in which you can remit the amount at the risk of the Company. Do not fail to be prompt in remitting each installment.

*..... Agent.*

*Date.....*

**250.** This is the principle of the French and German policies, which are usually written for *ten years*, with the premiums payable annually, *without notes or interest*. The agent gets *two* full years' premiums as his commissions, but has no interest in the subsequent premiums, which must be paid at the office of the company.

**251.** Insurance upon the "installment note" plan was introduced by the late American Insurance Company of Illinois, upon its re-organization and removal from Freeport to Chicago, in 1869. On January 1, 1884, the business of the American was transferred to the Home Insurance Company of New York, including the outstanding "installment notes" of the policy-holders of the American, for the sum of \$118,000, cash,

Mr. Charles Currier, Secretary of the American, assuming the position of Secretary of the Farm Department of the Home, at its western branch office, Chicago.

**252.** About 1870-71, The Continental, of New York city, set aside the sum of \$250,000 for the purpose of experimenting in this, their "new" branch of the business, which it still continues.

**253.** The peculiarities attending this form of note, and the liabilities of the insured thereunder, have been the source of much legal controversy in several of the States. But the result, in the main, has been in favor of the legality and collectability of the note, where payment is refused. The American, having done the largest business, is found as one of the parties to most of the suits. Some of the cases are here cited, distinguished as *favorable* or *unfavorable*, it being a noticeable fact that the status of this note was the question at issue in nearly every case; and that all of the unfavorable decisions were in the Michigan Superior Court.

*Favorable:* American Ins. Co. v. Henley, 60 Ind. 515; Same v. Klink, 65 Mo. 78; Same v. Kuhlman, S. C. A. Mo. 1879; Same v. Neuberger, S. C. Mo. 1; Same v. Smith, S. C. Mo.; Same v. Cogle, S. C. Mich. 1878; Mitchell v. American Ins. Co., S. C. Ind. 1875; Williams v. Albany Ins. Co., 19 Mich. 451; Continental v. Boykin, S. C. Pa. 1886; Wall *et al.* v. Home Ins. Co., 9 N. Y. 157; Blackerly v. Continental, N. Y., S. C. Ky.; Matthews v. American Ins. Co., S. C. Com. Ohio; Caulfield *et al.* v. Continental Insurance Co., S. C. Mich. 82.

The case of Kuhlman, *supra*, was a test case for 35 companies, before the Court of Appeals, February 11, 1879, where the notes were held valid.

*Unfavorable:* Am. Ins. Co. v. Cutler, S. C. Mich.; same v. Woodruff, 34 Mich.; same v. Story, 8 Ins. Law Jour. 691; York v. Am. Ins. Co., 30 Mich., 8 Ins. Law Jour. 44.

## STEAM-BOILER INSPECTION AND INSURANCE.

**254.** STEAM-BOILER INSURANCE had its origin in the necessity for concentrated effort to check the immense loss of life and property constantly resulting from the explosion of defective steam-boilers, in manufacturing establishments and elsewhere, by means of some uniform system of thorough

examination by skilled inspectors, whereby deficiencies and imperfections could be detected, and fatal results be thus prevented.

**255.** The present system is of comparatively recent introduction into the United States, though it has been in practical operation in England for many years. Its object is to furnish indemnity for, and security against, steam-boiler explosions, so far as possible, by frequent critical examinations, by duly authorized inspectors, of all steam-boilers covered by the policies of the company, and such others as they may be called upon to inspect officially.

These inspections have already brought to light some startling facts of vast importance, not only to the Boiler Insurance Company, but to other underwriters covering upon manufacturing establishments using steam-boilers, also. The amount of carelessness and incompetency revealed is really deplorable.

**256.** Boilers declined by these companies after inspection are virtually "*condemned*"; and fire underwriters should insist upon "inspection certificates," in all cases where boilers are used upon premises under the protection of their policies.

**257.** The advantages of *boiler insurance* are thus summarized in a Scottish company's prospectus:

1. It reduces the liability of explosion to a minimum.
2. It acts as a check on boiler attendants.
3. It prolongs the life of boilers by providing for their better management.
4. It greatly lessens the cost and frequency of repairs.
5. It relieves owners to a great extent of their responsibilities under the Employers' Liability Act.

There are now two regularly organized Steam-Boiler Inspection and Insurance companies in the city of New York, and one in Canada. The certificates of the Inspectors of the companies are generally sought for by owners of mills and factories when seeking for fire insurances upon their premises, as they are valuable guides to the acceptance or rejection of such risks, and where such certificates are not offered, it would be well for fire

insurance companies writing upon manufacturing establishments to *demand* such "*inspection certificate*" for every boiler in use upon premises offered for insurance; and the application for insurance should embrace this question, and a specific answer, amounting to a warranty, should be required of every applicant.

**258.** In addition to many of the customary conditions of the fire policy, the steam-boiler insurance contract usually stipulates against liability, except while the property covered is in the actual care of and managed by the insured, and used in the prosecution of his own business; and against loss where the boiler covered by the policy is in charge of a person known to be incompetent or negligent; or from explosion *caused by the burning of the building* or vessel containing the boiler; or, in case the weight on the safety-valve, as approved by the inspector, and specified in the application to be — pounds per square inch, shall be exceeded; also that when any defect is discovered in a boiler, it shall not be used until thoroughly repaired and tested.

**259.** Steam-boiler insurance, though not usually regarded as "other insurance," and as such entitled to contribute upon a loss where its policies may be found in contact with fire insurance, it might occur, nevertheless, in cases of boiler explosions, where fire ensues, thus entailing liability upon fire policies covering such boiler, that a policy of the *Steam-boiler Insurance Company* might be a co-insurer upon the damage to the "*boiler and surrounding property*;" and it might, under certain circumstances, affect the adjustment of the fire loss, especially where copies of "ALL policies upon the risk" are called for; and as "the policy of insurance which the steam-boiler company issues covers damage to boilers, buildings, stock, and machinery, arising from explosion;" and "should an explosion or rupture occur, the company makes good all loss or damage (except by fire) to the *boilers and surrounding property to the extent of the amount insured*, it would seem that copies of any such policies as may be in existence upon the property would be included in that stipulation; for when fire ensues after the explosion of a boiler, it is a delicate question to settle

where the explosion left off and the fire began, and where the respective liabilities would be operative. It was just upon this point that, in 1879, the London, Ont., Mutual Boiler Insurance Company refused to pay its pro rata share of the loss with co-insurers upon the mill, which was caused by the explosion of a steam boiler in the Dominion Paper Company's mill, which held its policy for \$2000 on three pulp boilers, \$2000 on buildings, \$2000 on machinery, \$2000 on steam boilers, \$800 on rotary boiler, all against damage by explosion, with other insurances in ordinary fire offices.

#### PLATE GLASS INSURANCE.

**260.** The insurance of glass fronts of stores, show-cases, mirrors, etc., in dwellings is of comparatively modern date. The earliest known in England was about A. D. 1853. There are now a number of companies there writing this class of risks. In America, the earliest company of which there is any reliable record was organized in Philadelphia, A. D. 1867. The Metropolitan Plate Glass Company was organized in 1874, the Fidelity and Casualty Co., including breakage of plate glass, in 1876, and Lloyd's Plate Glass Co. in 1882, all of New York city, and which are transacting quite an amount of business in this special line. The use of plate glass is rapidly increasing, both in quantity and size.

**261.** These companies, by the terms of their contract, "are not liable to make good any loss or damage (to plate glass) which may happen by, or in consequence of, any fire." Hence it might occur, as in steam boiler insurance (**259**), that both fire and plate glass insurances might be found upon the same loss, and while the latter, by its terms, would not be liable to the insured, yet inasmuch as the conditions of the fire policy make no exceptions in the matter of contribution from other companies of any kind, if covering upon the same risk, in the event of loss, there might be difficulties and misunderstandings between the two classes of insurers and the insured which could be obviated by excepting plate glass companies when losses were caused by fire.

**262.** Plate glass is liable to injury from various accidental causes, as well as wilful, as in cases of riot ; the Early Closing Association has also been the cause of numerous losses caused by dissatisfied employers of those declining to join the association. The "blizzard" of 1888 destroyed hundreds of plate glasses in New York city. As to the insured, there is no moral hazard, as there can be no gain to himself by wilfully breaking his glass. The American companies obviate this risk by replacing the glass and taking the salvage. In England, however, the practice is quite different. In cases of breakage bids are obtained from glaziers for replacement, and when this is paid for the company has no further interest in the salvage.

*Salvage* forms no small portion of the profits of a plate-glass insurance company. It frequently occurs that the plate is simply cracked, leaving portions, which, if carefully *removed*, can be *cut up into* smaller sizes, and either used by the company on other occasions, or sold to dealers, while small pieces have a cash value. One company, within the writer's knowledge, has a standing contract for all broken plate-glass pieces that will cut into squares 6 x 6 inches.

The insurance departments generally recognize this salvage as a cash asset, though the New York department has refused to so recognize it.

**263.** The rate of premium is dependent upon the size and the location of the plate when in place. Plates in doors, from being constantly opened and shut, usually pay a higher rate than front or window plates ; while those of the latter not over a foot above the pavement, or in corner buildings with plates upon each side, are charged half per cent. extra. Also for plates set in metal frames, or secured with putty, by which the expansion and contraction of the glass is prevented, many cracked plates arising from this cause. In very cold weather the gas inside of show windows heats the inner side, while the outer side is at the same time very cold, causing an expansion and contraction of the plate, rendering it liable to shiver at the slightest shock.

**263a.** The following are the dimensions of polished plate-glass, with card prices, from which a discount is usually made to dealers of 50 per cent or more.

The sizes are indicated in inches by the top row and left hand column of figures. Top row 12, side column 24, or 12x24, price \$2.00; 20x24, price, \$4.05; 90x160, price, \$242.00.

## LONDON AND MANCHESTER PLATE GLASS CO.

Size in Inches.	12	20	30	40	50	60	70	80	90
24	\$ 2.00	\$ 4.05	.....	.....	.....	.....	.....	.....	.....
30	2.55	5.10	\$ 10.05	.....	.....	.....	.....	.....	.....
40	4.05	8.95	13.40	\$ 23.05	.....	.....	.....	.....	.....
50	5.10	11.15	22.20	29.60	\$ 37.00	.....	.....	.....	.....
60	6.10	13.40	26.65	35.30	44.00	\$ 53.00	.....	.....	.....
70	9.40	15.65	31.05	41.40	52.00	62.00	\$ 72.00	.....	.....
80	10.75	23.65	35.50	47.35	59.00	71.00	83.00	\$100.00	.....
90	12.05	26.65	39.95	53.25	67.00	80.00	98.00	112.00	\$125.00
100	16.40	29.60	44.40	59.15	74.00	93.00	109.00	124.00	140.00
110	14.75	32.55	48.80	65.10	81.00	103.00	120.00	137.00	154.00
120	16.10	35.50	53.25	71.00	93.00	112.00	131.00	149.00	168.00
130	23.10	38.45	57.70	76.90	101.00	121.00	142.00	162.00	197.00
140	24.85	41.40	62.15	82.85	109.00	131.00	152.00	174.00	212.00
150	26.85	44.40	66.55	93.00	117.00	140.00	163.00	202.00	227.00
160	28.40	47.35	71.00	108.00	134.00	161.00	188.00	215.00	242.00

## INSURANCE OF PROFITS.

**264.** In the earliest days of marine insurance, the writing upon what was then called "imaginary" or expected profits upon some adventure was common in England and upon the Continent generally, except in France, where insurances upon freight or profits expected were forbidden. (Emerigon, chap. viii., § viii.) The earliest text writers upon insurance: Santerna, A. D. 1552, part 3, n. 40, 41; Stracca, A. D. 1558, gloss. 6, n. 1, and after them Roccus, A. D. 1708, Magens, A. D. 1755, and others later, all agree that "profits," expected to arise from shipments of goods, may be lawfully made the subject of insurance. The Ordinance of Hamburg, A. D. 1731, says:

"Assurance is also allowed to be made upon an expected or imaginary profit, upon commission, against risk of fire, water, and war, as well as upon the rise and fall of the prices of goods, etc." (2 Magens' Essays 213.)

**264a.** The ordinance of Amsterdam further states that "the maginary profit any one promises himself on his interest in a cargo must be *valued* in the policy, with a description as to *which* goods the profit is expected to arise from."

The right to insure "expected" or contingent profits has been

long settled in England, and has received repeated and elaborate confirmation.

Marsh. Ins., chap. IV., § 1; 1 Arnould Ins. 204, §§ 92, 93; *id.* 222, § 101; 1 Kent's Comm. 270, and authorities cited; Eyre v. Glover, 16 East. 218; Barclay v. Cousins, 2 East. 544; King v. Glover, 2 Bos. & Pull. N. R. 206; Putnam v. Merchant Ins. Co., 5 Met. Mass; French v. Hope Ins. Co., 16 Pick. Mass. 397.

**265.** Insurance upon "expected" profits is not covered by a simple insurance upon the goods from which they are expected to arise. The profits "expected" must be specifically named as the subject of the insurance with an agreed percentage upon the sale price, as required by the Amsterdam ordinance above cited (**264a**), and the goods must be owned or under the control of the party carrying the profit insurance.

Lucena v. Crawford, 2 Bos. & Pull. N. R. 269, 315; Wright v. Pole, 1 Ad. & E. 625; Wright v. Sun Fire Office, 3 Nev. & Man. 819; Wells v. Phil. Ins. Co., 9 Serg. & R. 103; Niblo v. N. Am. F. I. Co., 1 Sandf. N. Y. 551; 3 Johns. Cas. 39; Loomis v. Shaw, 2 Johns. Cas. 36; Tom v. Smith, 3 Caines N. Y. 245; 3 Kent. 270; Civil Code L. C. 2493, and authorities cited; 1 Philip Ins. 166, § 345; *id.* 239, § 461.

**265a.** *Commissions* to be earned upon sales of consigned goods in the hands of factors and other bailees differ from other expected profits only in the fact that the latter usually has reference to ownership of the property, while the former refers only to property "held in trust as on commission" for others. They are, like profits direct, insurable against loss by fire to the goods specifically as such; but they are never covered by insurance, either under the Usual Commission clause (**1206, 1227**), or directly upon the goods from the sales of which such commissions are expected to arise, and without a limit to the percentage thereon. See Amsterdam ordinance *supra*, and authorities cited above. (**716.**)

In a policy upon profits, or commissions to accrue upon certain specified goods, the insurer undertakes that they shall not be prevented by the peril insured against. Such insurances are always made upon a valuation (**264a**); hence in the event of loss it will not be necessary to show what profit would have accrued; it is sufficient to show such interest and the loss thereof. If the loss upon the goods be total, the loss of profits thereon will be total also; but if a portion only of the goods be

loss, it constitutes a partial *pro rata* loss upon the interest covered by the profit insurance. (284.)

**266.** Commissions paid to factors on sales of consigned goods do not, in any manner, form a part of the cost of such goods to the owner, or consignor, for they do not accrue until the goods have been sold and settled for by the purchaser. Sales to underwriters through the medium of a fire are not sales entitling the factors to commissions thereon, except when such commissions are specifically covered by insurance at a definite percentage.

The question of commissions, earned or unearned, unless covered by insurance, is one in which the insurer has no interest; they are matters between the owner or consignor and consignee, and are paid out of the sale price of the goods, which has been correspondingly increased to meet this charge.

**266a.** This question of commission forming a part of the market value of goods held by factors, and included in the insurance upon the goods, had long been a source of trouble between commission merchants and underwriters, but was finally settled, so far as court decisions could settle it, in the case of *Robbins & Appleton, sole agents of the American Watch Co., v. the People's Fire, N. J.*; *The Columbia Fire, N.Y.*; *The Fireman's Fund, Cal.*, and *the Hamburg-Bremen*, where the insurance was taken under the usual commission clause (1206), covering the property of the Watch Co., and that of the agents as well, in one sum. The last-named company paid as for a total loss, allowing for the agent's commission; the other three companies refused to acknowledge any liability for commissions, and were severally unanimously sustained by the courts in which the suits were brought, to wit: *The U. S. C. C. Dist. N.J.*, the *Sup. C. of New York*, and the *U. S. C. C. So. Dist., N.Y.*, respectively. Each court holding that the claim for commissions upon the lost property as a part of the cost thereof "was without the shadow of merit." The cases were tried A. D. 1879-80, and the apportionment of contribution was made by each court under the rule of compound policies, Class II (2085), in exactly the same amounts.

**267.** *Product policy*, so-called, covering the profits expected to arise from contracts for goods to be manufactured and delivered within a stated period, where such delivery may be prevented by the occurrence of fire. This policy usually provides that in case of the total destruction of the mill or factory, by which the manufacture of the goods is totally prevented, the company shall pay a certain amount named for each working day that such production shall be prevented; in cases of partial destruction preventing a full average product, the company shall pay per day "that proportion of — dollars which the product so prevented bears to the average daily yield prior to the fire," not exceeding in either case, in the aggregate, the amount of the policy. The loss to be computed from the day of occurrence of any fire up to the time when the mill could, with ordinary diligence and dispatch, be repaired or rebuilt, and machinery replaced therein, and not to be limited to the day of expiration named in the policy. (272.)

The daily liability is ascertained by dividing the amount of the policy by 300, the estimated number of working days in the year. There are but few companies that carry this kind of risk now.

#### RENT AND LEASE POLICIES.

**268.** *Conditions of the policy*:—"If the interest of the insured in the property be any other than the entire, unconditional and sole ownership of the property, for the use and benefit of the assured, \* \* \* it must be so represented to the Company, and so expressed in the written part of this policy, otherwise the policy shall be void."

**269.** RENT and LEASE POLICIES are both intended to indemnify for loss of rental upon certain specified premises in consequence of damage by fire, the one to the owner, the other to the lessee in possession as owner; and though thus similar in purpose, they are otherwise dissimilar, both in form and effect. \*

\* NOTE.—Mr. John G. Storm, president of the Lenox Fire Ins. Co., New York, was the first fire underwriter in this country to issue "Rent" policies. Currie's Magazine, vol. xxi., 1863.

#### RENT POLICIES.

**270.** *Rent policies* are issued directly to the owner, or lessee in possession as owner, of the property, in such amount as may

be agreed upon; and while, as a principle, it may be desirable that the sum covered should be the maximum aggregate of the rental received upon the premises, yet, as it may occur that some portion of the premises, when variously tenanted, may remain vacant for longer or shorter periods during the life of the policy, it should be specifically provided *that such agreed indemnity should not exceed the annual rental at the time of the damage by fire*. The rental at the time of the fire is evidence.

Franklin F. I. Co. v. Drake, 2 B. Monroe, Ky. 45; 2 Bennett's F. I. cases 98; Columbia Ins. Co. v. Lawrence, 2 Peters U. S. 25; Cumberland Nat. Ins. Co. v. Schell, 29 Penn. St. 31; Leonarda v. Phoenix Assr. Co. Lond., 2 Rob. La. 132; 34 Me. 487; 3 Bennett's F. I. Cases 490.

**271.** Where the amount insured is less than the aggregate annual rental, it is customary to limit the liability of the company by stipulating that the sum insured shall be taken as the yearly rental of the premises.

**272.** The liability of the company is *limited to the time necessary to repair the partial damage sustained, or to rebuild in case of total destruction, without reference to the value of the property*, and such time is to be computed from the day of the occurrence of the fire, without reference to the duration or unexpired term of the policy, even should it expire by its terms the next day after the loss. (267.)

**273.** The policy of some companies contains a co-insurance clause, as follows:—

"This company shall be liable only for such portion of any loss as the sum hereby insured bears to the annual rental of the building."

**274.** In some policies again, when the rent continues to run on during the time of repairs, *subrogation* is stipulated for, as it is the loss of rent that is to be made good; if there be no actual loss there can be no liability (1821), as follows:—

"And the said company shall be *subrogated* to any remedy which the insured may have against any tenant liable for rent during the period of repair or restoration of the premises, for their reimbursement."

#### LEASEHOLD POLICIES.

**275.** The object of a *leasehold policy* is to secure to the *lessee* of certain specified property any difference in the value between the sum he may pay for the leased premises and the value of the property *for occupancy*, either for his own pur-

poses, during the currency of the lease, or in the increased amount which he may receive for the rents of the same from his tenants. The longer the term, the more valuable the lease; and as it may be determined at any moment by the destruction of the premises by fire, the amount insured should be the value of the lease, or, in case a less amount is insured, the policy should be made subject to the co-insurance clause. (273.)

**276.** *The duration of the lease is made the basis of the insurance contract.* On its determination by its terms, and in fact, by reason of the peril insured against, the policy becomes liable as for a total loss, subject, however, to an agreed pro rata deduction from the amount insured for each month expired up to the time of the fire, as an equivalent for the decreased value of the lease at the time of the injury; herein the lease policy differs from rental.

Should the damage be but partial, and the duration of the lease be unaffected thereby, the policy becomes virtually a "rent policy," and the insurer pays an agreed monthly rental for the time required to put the premises in tenantable condition again. (270.)

A *rent or lease policy* has no reference to the value of the building as such, simply referring to its *value for occupancy*, that is, the rental it yields.

#### LEASEHOLD PROPERTY.

**277.** *Condition of the policy:—*"Or if the building stands on leased ground, it must be so represented to the company, and so expressed in the written part of the policy, otherwise the policy shall be void." (478, 4.)

**278.** Where the leasehold interest is upon a building erected by the lessee upon *leased ground*, the estimate upon such building for insurance should be graduated for the time the lease has to run, and to the conditions as to the disposal of the improvements at the termination of the lease, as in case of loss the estimate upon such a building would not be affected by any incidental disadvantages, such as the liability of removal, etc., the value for loss under insurance being predicated upon its value as such building generally. (279b, 1717.)

Hence where, by the terms of the lease, the building is to be removed on expiration, it may be more advantageous to sell to the underwriters, even at a low figure, than to remove it.

*Fowle et al. v. Springfield F. & M. Ins. Co.*, 8 Jud. C. Mass. 112 Mass. ; 7 Ins. Law Jour. 188; *Lycoming F. I. Co. v. Haven*, U. S. S. C. Oct., 1877; 7 Ins. Law Jour. 449. (279b)

**279.** A lessee may be bound by the terms of his lease to rebuild, to repair or replace the property if damaged by fire during his tenancy; when so liable, his insurable interest is to the amount of the loss of repairing or rebuilding, without reference to the value of the unexpired term of the lease. A policy issued to a lessee, unless otherwise limited by its terms, will include all such interests as he may have, as such, in the safety of the property described, from loss or damage by fire.

*Imperial F. I. Co. v. Murray*, 73 Penn. St. 13; 2 Ins. Law Jour. 876; *Lawrence v. St. Marks F. I. Co.* 43 Barb. N. Y. 479; May Ins., § 84. (Blodgett, Law of Fire Ins. contract.)

**279a. Valued Leasehold policies.** Lessees many times rent or lease premises for a fixed period, and the agreed rental is paid in advance for a year or term of years, and a policy is issued valuing such interest and fixing the liability of the insurer, at such fractional part of the sum insured as the unexpired term of the policy shall bear to the whole term thereof. Such policies are termed "Leasehold decreasing valued policies." A. C. Blodgett *supra*, citing *Cushman v. Northwestern Ins. Co.*, 34 Me. 487; 3 Bennett's F. I. cases 490.

**279b.** Buildings erected by lessors upon leasehold ground are considered personal or chattel property, and where such have been burned, and though by terms of the lease they would have to have been removed or forfeited to the landlord, it was held that the intrinsic value of the building as such, at the time of the fire, without reference to any special or contingent circumstances connected therewith, was the measure of damage to the insurer. (278.)

1 Hall, S. C. N. Y. 41; 18 Upper Can. Q. B. 130; 5 Pick. Mass. 478; 8 *id.* 283; 3 Casey, Pa. 291; 8 Harris 303; *Hope Mut. Ins. Co. v. Brolasky*, 11 Casey, Pa. 283; *Emery Mfg. Co. v. Ins. Co.*, S. Jud. C. Mass., Nov., 1883. (279.)

## OPEN AND VALUED POLICIES.

**280.** All policies are, in their nature, either *open* or *valued*; a distinction relating solely to the mode of estimating and proving the interests of the insured in the event of loss under the policy.

1 Philips Ins. 24, § 37; 1 Arnould Ins. 18, 303; May Ins. 6, 7; Park Ins. 103, 108, 266; Marsh. Ins. 190, *et seq.*; Civil Code L. C., § 2480.

## OPEN POLICY.

**281.** An *open*, in contradistinction to a *valued* policy, is one containing no declaration of the amount of the interest of the insured, and consequently casts upon him the burden of proof of such interest where he claims an indemnity; the value thereof being *open to inquiry and proof*.

1 Arnould Ins. 324; 1 Duer Ins. 97; 1 Marsh. Ins. 203; 1 Parsons Ins. 256; 2 Burr. 1170, *et seq.* as to open Marine policies.

The term open policy is also applied to denote a contract which is kept open for new subscriptions, and additional amounts entered from time to time, as in open fire or running policies (**309**), open transport policies (**316**).

## VALUED POLICY.

**282.** A *valued policy* is one where the parties having agreed upon the *value* of the subject or interest to be insured, in order to save the necessity of further proof, have inserted the *valuation* in the policy in the nature of liquidated damages; thereby precluding further proof of *value* except in cases of fraudulent over-valuation. (**1722, 1898.**)

The general principles governing *valued policies* are :—

In the absence of fraud, the *valuation* is conclusive on both parties, and neither can introduce evidence to show that it differs from the amount really at risk.

**283.** The *valuation* is held as conclusive upon the insured as upon the insurer, though contained only in an application. "But such valuation is only conclusive between the parties to the same policy, and if the assured has sought to protect a

portion of his interest in any subject of insurance by one valued policy, and afterwards another portion of his interest in the same subject, by a second valued policy, the valuation in the one policy does not limit him as to the sum he may recover on the other." "It is not enough for the underwriters on a particular policy to show that the assured has received from another quarter the amount of the valuation in that policy, unless this amounts, in point of fact, to complete indemnity."

Lord Ellenborough in *Bousfield v. Barnes*, 4 Camp. 227; 1 Arnould Ins. 314; Shaw's Ellis Ins. 68, and authorities cited; 12 East. 646; 13 *id.* 326, 327.

**284.** In the case of a partial loss under a valued policy the rule of apportionment is: the *percentage* of damage sustained by the property at risk is first ascertained, and the insurer will pay the same ratio of *percentage* upon the agreed insured *value* of the property.

1 Arnould 305; Hopkins Mar. Ins. 251; Duer Ins. 97; Park Ins. 108, 111; Marsh. Ins. 203.

**284a.** The estimate which the insured has placed upon his property must be accepted by the underwriters, either in express terms in the policy, or by making the application, containing such *valuation*, a part of the policy; or by some clause therein recognizing the necessity of a *valuation*, before it will bind the insurer.

**285.** The *valued policy* not only estimates the value of the property covered by the insurance, but also values the loss; it is equivalent to an assessment of damages in anticipation of a loss. The value, being definitely fixed by the terms of the policy, cannot be questioned except, as already intimated, in the case of fraudulent over-valuation of the subjects or interest at risk; and to be valid as a defence, such over-valuation must be unquestionably apparent. The onus of proving the value is upon the insurer, when made a question.

The valued form of policy is seldom used in fire insurance, but enters largely into the marine branch. The words "*valued at*" are the usual criterion of a valued policy.

## WAGER OR GAMING POLICIES.

All policies are either "*policies on interest*," or "*wager or gaming policies*."

**286.** Insurance is made between the merchant to whom the subject of the insurance belongs, and a stranger who, having no interest in the property and preservation of the thing, nevertheless takes upon himself the perils; whereas, a wager is made between two strangers, neither of whom has any interest in the thing. Dumoulin on Usury, A. D. 1550.

## INTEREST POLICY.

**286a.** An *interest policy* is one where the insured has a real, substantial, assignable interest in the thing insured.

A contract of insurance "*on interest*" differs from a *wager* in that the former is a contract of indemnity, which the latter is not.

A policy *on interest* agrees in substance with a bond, or any other contract of indemnity or guaranty, but differs in form; whereas, it agrees with a *wager* in form, but differs in its character, its objects, and the rule by which it is construed.

<sup>1</sup> Arnould Ins. 11, and authorities cited; <sup>1</sup> Philips Ins. 106, §§ 172, 175; Angell Ins. 14; Marsh. Ins. 199; Sweeney v. Franklin F. I. Co., 29 Penn. St. 337.

**287.** A *wager or gaming policy* is pretended insurance, founded on an ideal risk, where the insured has no interest in the thing insured, and can therefore sustain no loss by the happening of any of the misfortunes insured against. Judge Duer says: "Insurances, improperly so-called, in which the party nominally insured having no interest in the subject exposed to hazard, the contract, although in form a policy is in truth a *wager*." (31, 48.)

<sup>1</sup> Duer Ins. 92; <sup>2</sup> Valin's Comm. 26; <sup>1</sup> Magins Essays 29, § 26; Emerigon, ch. 1, § 1, with many old authorities; Weskett Ins. 582; Jubel v. Church, 2 Johns. Cas. 333; Buchanan v. Ocean Ins. Co., 6 Cow. 318.

**287a.** *Wager insurance* was extensively practiced in the early marine policies, under the several clauses, "*interest or no interest*," "without further proofs of interest than the

policy," "without benefit of salvage to the underwriters," "the policy to be deemed sufficient proof of interest in case of loss," or others equivalent,—all importing that the policy shall be held responsible in case of loss, though the insured have no insurable interest in the property. (1 Arnould Ins. 276.)

EMERIGON (page 4) says of *wager insurances* :—

" Provided their object involves nothing dishonest, and there is neither fraud nor surprise, *wagers* are in themselves lawful ; and being so, why is it that the fortune of ships is not more generally allowed to be embraced by them? The reason is that navigation has been viewed as a matter interesting the state. It is not to be borne, therefore, that one should place himself in a situation to desire the loss of a vessel. The greediness of gain is capable of producing crimes which it is desirable to prevent. Hence, the cause that, in most commercial places, *wager insurances* have been prohibited."

**287b.** *Wager or gaming policies* are, upon general principles, *void* in law, as against public policy, and tending to create an interest in the occurrence of a loss where none exists for its prevention. (3 Kent, Comm. 276-7.)

The question whether a policy is a *wager* or not depends upon the whole instrument. To be such it must appear to be such upon its face. In a suit at law the decision is a question for the court.

#### LONG-TERM POLICIES.

**288.** All policies having more than one year to run are designated as "*term policies*." The custom of insuring for a number of years in one policy is co-existent with the rise of fire insurance.

The *Fire Office*, of London, A. D. 1680, the first joint-stock office doing a fire business (**51**), and confining itself to buildings only—upon the yearly *rental* of which, and not upon the *value* of the property, the premium rate was computed—issued long term policies up to 31 years, at corresponding reduced rates, when paid cash in advance, as compared with the multiples of the annual premiums. A policy covering £100 upon

brick or stone buildings—timber buildings double rate—was written for :

	£	s.	d.	
1 year,	0	5	0	equal to about \$0.25 per \$100.
7 years, 5 annuals,	1	5	0	" " 1.25 " "
11 " 7 "	1	15	0	" " 1.75 " "
21 " 10 "	2	10	0	" " 2.50 " "
31 " 11 "	2	15	0	" " 2.75 " "

Losses to be paid as often as the house is burnt down or demolished within the term insured ; or, if damaged, to be repaired.

This office in A. D. 1700 reduced its rates in consequence of competition, and its terms of duration to 7 years at 6 annual rates.

The present long-term rates in England are :

For 2 years, 2 annual rates less 2½ p.c. discount, or \$1.95 per \$100

3	"	3	"	"	"	5	"	"	2.85	"	"
4	"	4	"	"	"	7½	"	"	3.70	"	"
5	"	5	"	"	"	10	"	"	4.50	"	"
6	"	6	"	"	"	12	"	"	5.28	"	"
7	"	6	"	"	"	net	"	"	6.00	"	"

**289.** The first New York Company, the Mutual, A. D. 1787, issued policies under seven classes of risks, up to 7 years, at premiums varying from 3 shillings for one year up to 10 shillings for 7 years, with an additional deposit of four to one of the premiums, upon each £100 of insurance.

On Aug. 6, 1819, a committee of *The Salamander Society* of New York (the original of the New York Board of Fire Underwriters) made the following report to the Society upon the subject of long-term policies ; the report was adopted.

" Your committee are also of the opinion that the deduction made for insurance for longer periods than one year is not sufficient ; by the present mode the insured pays more than the annual premium will amount to if compounded for the same term, as will appear by the following statement ; say premium for one year is \$100 :

A present payment of \$93.45	equals \$100 payable 1 year hence.
" " 87.34	" " " 2 years "
" " 81.62	" " " 3 " "
" " 76.28	" " " 4 " "
" " 71.29	" " " 5 " "
" " 66.23	" " " 6 " "

By this calculation a person insuring for 7 years, \$100 yearly premium, would pay \$576.75, whereas by the present mode he pays \$600. The committee therefore recommend that the following discounts be allowed, which are, fractions included, in conformity with the above principle :

For 2 years, 2 annuals less $3\frac{1}{2}$ p.c.					For 5 years, 5 annuals, less $12\frac{1}{2}$ p.c.				
3	3	"	"	7	6	6	"	"	15
4	4	"	"	9	7	7	"	"	17

In the same year, 1819, the *Ætna Fire* adopted a scale of long-term rates making the discount from annual rates 3, 6, 8, 10 and 12 per cent. for 2, 3, 4, 5 and 6 years policies, and 6 annuals for 7 years, which approximates closely to the English rates above cited.

**289a.** About 1859-60, the now very common practice of writing three years policies for two annual premiums, and five years for three annuals, came into vogue in the United States.

The "Farm Companies" tariff, accepted by the National Board of Fire Underwriters, Nov., 1872, upon frame dwellings in the State was, one year, 40 cents ; two years, 60 cents ; three years, 75 cents ; four years, 90 cents ; five years, \$1.15.

**290.** In *Canada*, term policies are limited by the Statutory Conditions of Ontario to a maximum term of 5 years for mutual companies and 3 years for others (ch. 161, §§ 32, 75). The Underwriters Association permit three years policies to be written only upon certain specified classes of risks, while many risks formerly written for three years are now restricted to annual policies only.

**291.** Many stock companies in the larger cities now write term risks freely upon store buildings in blocks and on contents, at rates formerly charged on detached dwellings ; and term risks upon manufacturing hazards, at corresponding rates, are now common among stock offices to meet competition by the "Factory Mutuals."

As *detached buildings* are liable only for their own depreciations and hazards, they may, so far, be safe to write upon for a term of years, *if the rate be made adequate, and is apportioned with regard to the annual premium on such risks.* But when buildings in blocks, in cities, exposed by adjoining premises and divers occupancies changing from day to day, some of them extra or specially hazardous, and beyond the control or respon-

sibility of the insured, *term policies* upon such risks become of dubious propriety.

In the matter of *manufacturing establishments*, many of the extensive woolen and cotton mills of the East are much better hazards for term risks than any store building or contents in cities can possibly be; and, being usually isolated, and exposed only by their own hazards, they may be fit subjects for term policies.

**292.** While, as a business principle, it may be judicious to make rebates in rates of premium paid in advance for insurance upon any desirable class of property, such rebate should be in the ratio of the *present value* of the money when received; but, under the present rule, the excessive deductions allowed from the aggregate annual rate is a simple acknowledgment that such annual rate is largely in excess of the value of the hazard. The actual difference in the results between single year and longer term policies at present rates is scarcely realized by the officials of our companies, or the practice would be speedily amended. The following formula will exhibit the rebate made upon a three years and a five years policy, as compared with a single year policy. Supposed annual premium \$100, less commissions, interest at 6 per cent. compounded. The ratios being two annuals for three years and three annuals for five years:—

DATE.	Premium and Interest.	1 Year.	3 Years.	5 Years.
Jan. 1, 1888 ..	Amount of premium.....	\$100.00	\$200.00	\$300.00
Dec. 31, " ..	Interest 1 year.....	6.00	12.00	18.00
	Earned 1st year.....	106.00	212.00	318.00
Jan. 1, 1889 ..	Premium paid 2d year.....	100.00	.....	.....
Dec. 31, " ..	Interest 1 year.....	12.36	12.72	19.08
	Earned 2d year.....	218.36	224.72	337.08
Jan. 1, 1890 ..	Premium paid 3d year.....	100.00	.....	.....
Dec. 31, " ..	Interest 1 year.....	19.10	13.48	20.22
	Earned 3d year.....	337.46	238.20	357.30
Jan. 1, 1891 ..	Premium paid 4th year. ....	100.00	.....	.....
Dec. 31, " ..	Interest 1 year.....	26.84	.....	21.44
	Earned 4th year.....	464.30	.....	378.74
Jan. 1, 1892 ..	Premium paid 5th year.....	100.00	.....	.....
Dec. 31, " ..	Interest 1 year.....	33.86	.....	22.72
	Earned 5th year.....	\$598.16	.....	\$401.46

From this table proceed the following results:—

\$100, in annual payments, earns in 3 years.....	\$337.46
\$100 in a single payment       “       “ .....	238.20
Difference in favor of annual payments.....	\$99.26
\$100 in annual payments earns in 5 years.....	\$598.16
\$100 in a single payment earns in 5 years.....	401.46
Difference in favor of annual payments.....	\$196.70
The present value \$337.46 (3 annual payments) is.....	\$283.34
Sum received in single payment for 3 years.....	238.20
Loss to company.....	\$45.14
Present value of \$598.16 (5 annual payments) is .....	\$447.01
Sum received in single payment for 5 years.....	401.61
Loss to company.....	\$45.40

This estimate will be somewhat modified by the difference in the *expenses* attending the various classes of policies, and by the liability of the risks to burn the first or subsequent years, in which event the premium earned would be larger in the long-term than in the annual policy. It is estimated that to make 3 years policies better than annuals in the matter of losses, some 60 per cent. of all losses must occur in the first year; while in the third year the chances favor annual policy some 40 per cent. In 5 years policies, an average of some 40 per cent. must occur within the first two years; in the third year the chances are about equal; while in the fourth and fifth years, the chances favor the annuals about 50 per cent. on the average.

**293.** Inasmuch as insurance companies are also “money loaners” for a consideration, the above results show a rather high rate to pay for money to loan at 5 per cent. or less.

The condition of the “long-term” business of the country, as gathered from the returns of twenty leading home offices and ten foreign branches, for the last 13 years, 1875 to 1888, inclusive, shows that, while the aggregate writing of the 30 offices has increased over those of 1875 about \$12,000,000 (with a decrease in rate of 16 cents per \$100), of which increase 72.6 per cent. was annual business; 20 per cent. was three years, and 07.4 per cent. was five years; the aggregate 3 years business shows an actual *decrease* of 02.4 per cent. in the writing, with

a decrease of 21 cents per \$100 in premium rate; and the 5 years writing for the same period shows an *increase* of but 01.6 per cent., with a decrease in rate of 25 cents per \$100. All evidences that the fire insurance business is not rushing to ruin through the instrumentality of term insurances, *per se*, as many fire underwriters are prone to believe; nevertheless, 27.4 per cent. of the aggregate business of thirty leading offices of the country is a large proportion to be locked up in the kinds of hazards now found covered by long-term insurances at present rates.

#### SHORT INSURANCE.

**294.** Short rates are, by usage among fire underwriters, always chargeable upon policies issued for terms less than one year,—technically termed, “short insurance.” The labor and expense in issuing a policy for five days are as great as for five years; and as in long term insurances a reduction of rate is made, so in short insurances a corresponding increase is charged.

**295.** Short insurance is customarily called for upon goods which are expected to be held but for limited periods of time, such as the staples, cotton, wool, grain, etc., stored in warehouses, usually under open fire policies for short periods; or for “time undeclared” (**§18a**), that is until removed, when the accrued premium is estimated for the term at risk at short rates.

**296.** Not unfrequently policies are issued to large establishments for one year, covering subjects in quantities, with the understanding that the policy may be canceled when the property has been disposed of within the year, at the customary short rate for the expired time.

**297.** Sometimes merchants having a full average line of annual insurance upon their stock, will, when making heavy additional purchases for the season, take short insurance upon such excess sufficient to cover any loss thereon before such excess may have been fully disposed of. So also, in large manufacturing establishments, where short insurance is wanted

upon an extra heavy stock, made up in anticipation of the business season. Pork-packers, especially, require heavy lines of short insurance during the packing season, and until the product can be disposed of.

**298.** Short insurance upon buildings is, upon general principles of inexpediency, usually discouraged by fire underwriters. There will, however, frequently be exceptional cases where such insurance may not only be prudent, but desirable, when the parties and attendant circumstances are well known, *especially when issued to the owner*; but when made to a contractor, with a losing contract on hand, more circumspection will be needful.

**299.** In all cases of short insurances, out of the customary routine of short business, the moral hazard should be unimpeachable, and the reasons for wanting a short policy should be satisfactory to the underwriter. "Fraudulent insurance is designed to mature early" (Walford). Experience has demonstrated that many suspicious, as well as well-known dishonest losses have occurred under short term policies, evidently taken out with such intent. (1485.)

**300.** When short insurance calls for days less than one month, the premium was formerly calculated by the short rate table for days, viz.: if over two days and less than five, charge as for five; if over five and less than ten, charge as for ten; and so on up to one month, but eager competition has devised a table now generally used, for any given number of days. See Short Rate Tables, *infra*.

**301.** While it is customary and equitable to charge short rates on all policies when canceled by the insured before expiration, there are cases where usage permits *pro rata* rates to prevail; as when one policy is canceled to issue another in its stead upon the same subject, in whole or in part; or when it may be desirable that several policies of varying dates should expire at a given uniform date.

**302.** The effect of issuing short policies at *pro rata* rates is equivalent to a reduction of some thirty per cent., and is in fact retailing goods at wholesale prices. It is the better plan when

writing a short risk, to be renewed at expiration for a year, to write it at short rate, and on renewal at annual rate make allowance for the difference of previous rate ; then if the risk is not obtained for renewal, the full rate will have been obtained for the time at risk.

## CERTIFICATES OF INSURANCE.

**303.** *Certificates of Insurance* in the fire branch are chiefly in use among heavy cotton, grain, and other similar dealers, and serve as collaterals for advances by banks upon the property covered, in lieu of the policy itself. It not unfrequently occurs that certificates are issued referring to a policy number as if issued, though no such instrument has ever been issued. In such cases the law holds that "the reference in the certificate to the particular number of a policy, although no such policy was in existence, made the terms and conditions of policies issued by the insurer in like cases a part of the contract, and that such policies were admissible to explain the meaning of the contract."

*Home Ins. Co. v. Favorite*, S. C. Ill. 263 ; *Hawke v. Niagara D. M. F. I. Co.*, 23 Grant 189.

In the case of *Underwriters' Agency v. Sutherlin*, 46 Ga. 652, it was held that no recovery could be had without producing the policy referred to.

**304.** The practice of issuing the certificates grew out of a desire to aid merchants in obtaining advances upon goods, the certificates to be used as collateral security, like bills of lading. But of late years, in the hands of agents, it has passed to far different uses, and many abuses have sprung up, and not a few frauds have been practiced upon insurance offices, as, by the system of making them payable to "bearer," many different owners may be insured without the company knowing who may be the insured until a claim is made. Of course in this way objectionable parties frequently got possession of these certificates. The more recent forms of the certificate contain the name of the party actually insured under the policy referred to, and the losses, if any, are to be adjusted only with the party so named in the certificate.

## VARIOUS FORMS OF THE POLICY.

**305.** The various *forms* of the policy, without regard to the subject written upon, may be classified as of two kinds, *specific* or *fixed*, and *compound* or *collective*.

And these again may be *concurrent* or *non-concurrent* upon the same risks. (347.)

These forms may also be further controlled or modified by the *pro rata clause*, in one or another of its several forms. (353.)

### SPECIFIC POLICIES.

**306.** SPECIFIC or FIXED insurance is of two kinds, differing only in the manner in which the respective amounts are ascertainable; but once ascertained, subject to the same rules of adjustment in cases of loss. (2163.)

*First*:—Policies *specific in form*; covering only specifically named subjects, in fixed sums upon each, in specified localities and for specified insurers, as:—

Company A.	Wheat.....	\$1,000
"	B. Flour.....	1,000

The several sums covered upon each subject being thus *fixed*, the contributive liability of each policy with coinsurers, if any, is definitely settled in advance at those respective sums. (2070.)

**307.** *Second*:—*Specific subjects* in compound policies, non-concurrent with coinsurers, if any, though the policy covers other subjects that are concurrent with such coinsurers, as:—

Company A.	Wheat.....	\$1,000
"	B. Wheat and Flour....	1,000

Here *flour* is the *specific* subject of the compound policy B, the insurance upon which may be any proportion, or the whole of the \$1,000, covering upon both wheat and flour, as the loss may require to indemnify the insured. (2071.)

*Specific policies*, as termed in the United States and in

Canada, differ widely from the *specified* policy in English practice, and the one should not be confounded with the other.

**308.** A *specified* policy in English practice is any policy covering one or more subjects in a single locality, but not subject to average. As compared with American practice it may be literally specific (**306**), covering but a single subject, or more in specific sums; or it may be general, covering several different subjects under one sum (**307**), provided only that they be in a single locality, and not subject to average; or, in other words, they are not confined to single subjects, but to single localities, without the average clause. Thus they may be either specific or compound under American practice. Hence in construing English policies, or applying English rules to the adjustment of losses under American policies, regard must be had to this important distinction. It was to the failure to note and act upon this distinction, when applying English rules to American policies, that so much confusion arose in the early American rules for apportionment of contribution among coinsurers upon a general loss. (**2996.**)

The specific class of policies embraces the *open fire* or *running*, the *transport* and the *valued*. (**289.**)

#### OPEN FIRE OR RUNNING POLICY.

**309.** The OPEN FIRE POLICY is one in which, although an aggregate amount and duration are usually expressed in the body of the instrument, yet specific amounts, term and subject covered are to be endorsed upon the policy—or in a book to which the policy is attached—by separate entries from time to time, for such terms, amounts,—not exceeding in the aggregate the sum named in the body of the policy during its currency,—in such localities and at such rates of premium as may be designated at the time of each entry, which is in fact a new insurance. The aggregate amount in the body of the policy, originally inserted to meet the requirements of a legal contract, is now generally omitted, the requirement being amply met by the amounts of each specific entry, which in fact shew the amount covered by the policy. The rate, however, is essential.

As to the time the risk is to run: either of the phrases "time open," or "time undeclared" (**848a**), amply fills the requisites of a valid policy. Under this form of policy it is optional with the company to accept or decline the risk.

*Orient, &c., Ins. Co. v. Wright*, 23 How. 401; *Sun Ins. Co. v. Wright*, 23 How. 412; *Elwell v. Crocker*, 4 Bosw. N. Y. 22; *Lawrence v. McCready*, 6 Bosw. 329; 1 *Philips Ins.* 258, § 504; 4 *Ins. Law Jour.* 683; *Murray v. Reed*, *Harmony Ins. Co.*, N. Y. S. C. 58 Barb.

**310.** Notice of shipment and of loss of such shipment received at the same time cannot be entered under the terms of the ordinary form of open fire policy. But it is customary, by special agreement, to allow a privilege, or delay, of twenty-four hours to the insured within which to make such entries—provided no damage has occurred to the shipment meanwhile—to enable him to cover any property received or shipped too late for entry on that day, which property might otherwise remain uncovered by insurance. (**317.**)

**311.** *The Underwriter's Policy* is the ordinary running policy made by the company in the name of its local agent, with the design that he should retain the custody of the instrument, and enter insurances thereon in favor of third parties by issuing to them certificates (**303**) corresponding with the facts as entered upon the agent's open policy.

*Richmond v. Niagara F. I. Co.*, C. A. N. Y. Dec., 79: 9 *Ins. Law Jour.*, 17.

**312.** Endorsements upon open policies should, for safety of the companies, be made daily, as a rule. In questions of the liability of the insurer under open fire policies, and entries made or agreed to be made, it is held that "where the insured is not liable for the premium, the underwriter is not liable for loss." This is an insurance axiom, and will work in any case.

## THE TRANSPORT POLICY.

### INLAND TRANSPORTATION.

**313.** The great inland commerce of the country gives occasion for a proportionate business of insurance on risks, differing very considerably from those of fire or of maritime navigation, and accordingly demanding modified forms of the insurance contract. (1 *Philips Ins.* 36, § 60.)

The earliest notice we get of policies of this class is in the *Insurance Ordinance of the city of Amsterdam*, A. D. 1744, under the name of "*transport policies*." At that period Amsterdam was the largest diamond market in the world; some 10,000 persons, of whom 9000 were Jews, were engaged in diamond-cutting alone. As a consequence, large consignments of this valuable article of commerce were sent and received daily to and from all parts of the world—all going by "the mail," and insured under this form of policy. The diamond trade is now heavy in the city of London. Many of these merchants have houses also in Amsterdam, to which place most of the rough diamonds are sent by mail to be cut and polished. The "Cape mail" brings large quantities of uncut diamonds from South Africa to London.

It is the Amsterdam form of marine policy of that date, tortured into a shape to meet the exigencies of the occasion. It is a "*valued policy*" to the fullest extent, which, considering the circumstances, could not well be otherwise, as no other value could have been satisfactorily agreed on after an actual loss. The status of property in transitu over inland routes is the same as for marine risks, not being in the possession of the insured during such transit, hence not liable to any moral hazard in that direction, attendant upon fire risks where the insured has possession of the property. It is also a "speculative" or *wager* policy, requiring no other proof of property or *value* beyond the policy. (282.) 2 Magins Essays, 136, 195.

The policy is inserted here in full as a *relic*, and will amply repay perusal by the curious in matters of insurance.

## TRANSPORT POLICY.

AMSTERDAM FORM, A. D. 1744.

**314.** We, the underwritten, do insure you ———, or whom else it may concern, wholly or partly, friend or foe, none excepted, viz.: Each for such sum by us here underwritten, from ——— or ———, already sent or to be sent, with the riding post, or ———, embaled or packed in such packet, case, sack, or box, marked and numbered as follows, ——— to ———, already laden or yet to be laden, in the ship ———, navigating from ———, embaled or packed in such pack, case, or cask, marked and numbered as follows, ———, whereof we, by these, take the risk for our account, to run from the

hour and day that the said insured goods shall be delivered and brought to the post-office, wagon, ship, or other places where it is usual to receive the said goods for the insured design, and that be made to appear to us; and shall continue till what is insured shall be as above arrived at —, and freely and peaceably, without any loss or damage, delivered in the possession of the insured, his factor, or to whom it is consigned. And the insured shall need to exhibit no further nor other proof of property or value than only this bare policy with which we, in case of average, or damage, entirely shall be satisfied, although the wares insured might be worth, or had cost less or more, as the same were by agreement, and to the satisfaction of both sides, particularly taxed and valued at the sum of —, which, in case of any accident, shall serve as a rule; and in all events or accidents, such other roads, vehicles, and vessels may be used and employed to forward the voyage, as, according to circumstances of time, by the insured or any other, shall be judged proper for the greater benefit and security of the goods insured; authorizing them thereto, specially by these presents; as also to lend a hand to the saving and benefiting of the said goods, to sell them and to distribute the moneys in case of necessity, without asking our consent; we shall also pay the charges incurred on that account, moreover the damage fallen thereon, whether anything be saved or not; and belief shall be given to the account of charges on the oath of him who shall have taken the same, without alleging anything against it; the said risk consisting of all perils by water and by land, tempests, fire, and wind, arrests by friends and enemies, detentions by kings, queens, princes, lords, and republics, letters of mart and contramart, villanies, and negligence of the postillions, servants of the office, waiters, sailors, waggoners, inn-keepers, billets of lodging, parties, robbers and thieves, and all other perils and adventures which anyways might befall the said goods, heard of and unheard of, usual and unusual, none excepted; putting us, in all such cases, in the place of the insured, to indemnify him for all losses and damage which he shall have suffered, each in proportion to his sum underwritten, the first as well as the last insurer to pay within three months after we shall have received the notice of the loss or damage, to the insured, or to his attorney, without any deduction; provided in ready cash be paid us, for the consideration of this insurance — *per hundred*, under obligation and submission of our persons and goods present and to come; renouncing as persons of honor all cavils and exceptions contrary to these presents, reciprocally submitting all differences which might arise concerning the damages and premiums to the decision of the chamber of insurance and averages of the city; choosing, in case of our dwelling out of the jurisdiction of the same, for *domicilium citandi et executandi*, the house of the secretary of the said chamber for the time being Done at Amsterdam, etc.

2 *Magens Essays* 153, 251, *Hamburg form*; 420, *Bilboa form*.

**315.** The Royal Exchange of London wrote Inland Navigation policies as early as A. D. 1801. In the United States most of our *fire* insurance companies possess *inland* privileges—chap. 466 N. Y. General Fire Insurance Act, 1853—while

many have the privilege by charter. C. F. Sibbard, a broker, So. Wharves, Philadelphia, wrote inland navigation policies in 1824.

In this country *Inland transportation* policies are of two kinds, viz.: *Open* and *Contract*.

#### 1. OPEN TRANSPORT POLICY.

**316.** The *open transport policy* is the counterpart of the *open fire policy* (309), the only difference being that this latter covers *goods at rest* against fire only, while the former protects them *during transit* from place to place, not only against fire, but all other dangers of transportation, as damages by water, theft, etc., etc., modified only by the liabilities of the several lines of transportation as common carriers, to which the insurers would be subrogated in case of loss. (1821.) It is in all other respects governed by the customs controlling the open fire policy. The agent may endorse or refuse to endorse any shipment reported to him, and no liability attaches until such indorsement is made. Except by special agreement, a certain time for such entries is allowed.

The policy usually provides for the laying up of steam and canal boats in localities, secure from all dangers, during the close of navigation.

*Crawford v. Hunter*, 8 Term 150 ; *Carver Co. v. Manufacturers' Ins. Co.*, 6 Gray Mass. 214.

#### 2. THE OPEN CONTRACT POLICY.

**317.** An *open contract* policy is one where the company agrees to underwrite, and the insured agrees to report for indorsement and pay the premium upon ALL shipments made to, or invoices of purchases received from certain points duly enumerated therein, for a given period of time, at rates of premium fixed in the contract ; and includes all risks of transportation, as well as of fire. Unlike the "open fire policy," however, the liability of the underwriter commences from the shipment of the property to or by the insured, without reference to the fact of indorsement or consent of the agent ; and the sums thus at risk, indorsed or not indorsed, cover goods lost

before the insured may have been advised of shipment, or before they had, from any cause, been indorsed upon the policy or book.

The frequency of reports for indorsement to be made may be a matter of agreement. They should be made as often as once monthly, at least, and the premiums duly collected.

**317a.** In open transport and contract policies, the amount of insurable interest is the invoice value at the time of shipment, with an agreed additional percentage to cover expenses of freight, insurance, etc.; and in case of loss it is customary to replace the goods by the shipper, the insurers paying for the same, and taking the salvage, if any.

In adjustments of loss under this class of insurance, the custom in marine adjustments usually prevails.

## II. COMPOUND POLICIES.

**318.** A *compound or collective policy* is a loose, floating contract, covering *in one sum*, and for a single premium, upon several subjects in one or more localities, for the same party.

**319.** It is virtually a specific insurance upon each or either subject under its protection to its full extent, or *pro rata* upon all, should the loss upon any one or more of such items so require, and in these proportions it will contribute to losses with co-insurers as if it had been originally specifically written in such proportions; but unlike the simple specific policy, after contribution with co-insurers under the contribution clause (**2193**), it *floats* in any unexhausted balance from one to another of its subjects, as full indemnity to the insured may require until exhausted, if need be, but without further liability to contribute with co-insurers, and this upon the broad principle that no policy can apply to a portion only of the property under its protection; it must protect as large a portion as possible of the whole, within its liability. (**2076.**)

**320.** The use of the *floating* principle in the collective policy antedates the introduction of fire insurance; it was common, and recognized as legal in early marine practices, and is

fully exemplified in what is known as insurance on "ship or ships" in England, or as designated in France, "*in quo vis*," meaning "whichever you please," under which the insurance could, under certain circumstances, at the option of the insured, float from one ship that might be saved to cover upon any other or others under the same insurance that might be lost.

Le Guidon 301; Ord. of France 1681; Ord. of Bilbao 1728; Emerigon, ch. vi., § 5; 3 Kent Comm. 257-8; 2 H. Black. 343; 3 Araould Ins. 173, § 78.

**321.** While the liabilities of insurances, *specific in form* (306) to contribute to the payment of loss, are limited strictly within the amounts and subjects covered, the liability of a *collective* policy may, at times, be modified by the claims of other subjects in the nature of specific insurance (307), which, not being included in any of the co-insuring policies upon the other items, it must protect, thus laying it liable either to pay heavily in contribution upon each item under its protection; or it may be called upon to pay a total loss under the policy upon a partial loss only of the property at risk, as when but one of several subjects covered in one sum may be destroyed, but to an amount in value equal to the face of the policy. (324, 2070.)

**322.** The object sought in *compound policies* is to supplement specific insurances and protect values that might otherwise be uncovered in one or several locations, and which at times could not be otherwise protected, thus obtaining more comprehensive insurance at a minimum rate of premium, by including several subjects or localities under one sum, the insured assuming the chances that they will not all be lost at the same time. Thus, a merchant insures to the amount of *ten thousand dollars* on sugar, wine, and coffee, value \$10,000 each, or \$30,000 in the aggregate.—virtually three policies for one premium; for, should either be totally destroyed, he gets the insurance, \$10,000, or as much as may be necessary thereof to cover the loss, he taking the chances as to the other two items; or, if all three of the subjects should be partially damaged, the insurance will be liable for its *pro rata* proportion in the ratio of the loss upon each.

This form of policy is a favorite with a certain class of shrewd

operators, as well as railroads, who place about enough *blanket insurance* upon their property to catch all the losses, and trust to chance to hold them harmless, or nearly so, upon the balance. (1545.)

**323.** It not unfrequently occurs that heavy stocks of certain classes of merchandise are held with smaller stocks of other items, and insurance is wanted upon all of it. In such cases, it is customary to take out *specific* insurance upon the heavy stocks, and a *compound policy* covering the same, in addition to the lighter stocks. The following example will illustrate:—

Company A (specific), on wines.....	\$10,000
“ B (specific), do .....	\$10,000
“ C (general), wines and sugar.....	\$10,000
“ D (general), wines and coffee.....	\$10,000

representing a heavy stock of wines, but lighter stocks of sugar and coffee.

In such cases, it is held by the courts that “the evident intention is to cover the *separate* articles (in the general policies) first, leaving any balance to cover the concurrent subject” (with the specific co-insurance). (319, 2069, 2213a.)

Royal Insurance Co. v. Reedel, S. C. Pa. 1875; 54 Pa. 35; Angelrodt v. Delaware Mutual Ins. Co., Mo. S. C. 1862; Baltimore Ins. Co. v. Loney, 20 Md. 20; Cromie v. Ins. Co., 15 B. Monroe, Ky. 432; Rix v. Mut. Ins. Co., S. C. N. H. 1849; 3 Benn. F. I. Cases 67; Nicolet v. Harlem Ins. Co., 3 Louis 366; 1 Bennett's F. I. Cases 382; Commonwealth v. Hide & Leather Ins. Co., S. J. C. Mass. (in equity) 1873; 3 Ins. Law Jour. 671.

**324.** In case of loss upon all or any of the items covered by policies C and D, they would at once become specific, and cover the several subjects under their protection in the exact proportions of the loss thereon (307), as in the following example:

Loss on wines, \$20,000; on sugar, \$5,000; coffee, \$3,000.

Company C would become *specific*, in the proportions of \$5,000 on sugar which it alone covers (307), and \$5,000 on wines.

Company D would become *specific* in the ratio of \$3,000 on coffee which it alone covers (307), and \$7,000 on wines.

The contributive liability on wines would be as follows: A, \$10,000; B, \$10,000; C, \$5,000; and D, \$7,000. (2085.)

**325.** *Compound policies*, covering several items under one sum, should always pay an advanced rate over specific insurance;

and, for the safety of the underwriter, should in every instance be made subject to the conditions of average in one or the other of its forms. (366.)

**326.** *Double insurance*, under *compound policies*, does not differ from other *double insurance*, and is liable in the same manner to *pro rata* contribution with co-insurers to its full extent. (2082, 2213.)

COLLECTIVE POLICIES embrace the *general*, the *excess*, and the *floating* forms.

## THE GENERAL FORM.

**327.** The *general form* covers, under *one amount*, upon several subjects or classes of articles combined, in *one specified locality only*, for specified parties, and at a single premium, like the *specified* policy of English practice. (308.)

This form, also called "*blanket*," is, in fact, a *float*er with a restricted range, being confined to one locality, subject to a common burning, as, "ten thousand dollars on *pork, flour and grain* in his warehouse located, etc.," and herein is the difference between a *blanket* policy and a "*float*er." (336.)

## THE EXCESS FORM.

**328.** The *excess form* is the *general form*, as above, with the additional stipulation that the amount therein named is declared to be in *excess* of any sum or sums already insured *specifically*, upon all or any of the subjects therein named; and conditioned further, "*not to be liable to contribution for loss thereon, until all of the specific insurance shall have been exhausted.*"

**329.** To make such *excess insurance* operative as against specific insurances on the same subject, under stipulation *seven* of the NATIONAL BOARD policy (contribution clause) (1991), as to "*other insurance*," its existence must be recognized and consented to as such excess, in the specific policies. The following is the customary form :—

"If at the time of loss, general excess insurance exists on any of the property herein named, such insurance shall not be held as co-insurer with this specific insurance, or be liable to contribute herewith in payment of any loss under this policy."

**330.** It is usually stipulated in the *excess form* that a certain amount of *specific* insurance shall be maintained upon the property, or the insured are to be held as co-insurers for any deficiency in such sum of specific insurance at the time of the loss.

**331.** In case of "other *excess* insurance" upon the property, it will be held to contribute *pro rata* to the payment of loss in *excess* of the *specific* insurance only. To make this clear, the following clause is usually inserted, viz.:—

"The liability of the insurers under this policy shall be in the proportion that the amount of this insurance shall bear to the total amount of *excess* insurance upon the entire property at risk."

**332.** Its object, like the *floater* proper, is to cover *generally* upon all property already covered *specifically*, so that, in the event of loss or damage, any deficiency of such specific insurance upon any portion of the property, under the protection of the *excess insurance*, may be fully met.

**333.** It differs from the ordinary *floater*, however, in being duly recognized as *excess insurance* by the specific policies upon the same property, thus avoiding any conflict of conditions, as is the case in the arbitrary stipulation of the *floater* declaring *itself to be excess insurance*. It is usually confined to one locality, and is seldom subject to average. It should always go *in pairs, i. e.*, be accompanied by the *specific form* containing its proper recognition.

**334.** Being liable only for the *excess* of loss above the *specific* insurance, and the chances of being called upon to contribute being thus more or less remote, as the specific insurance may be more or less full, upon the property at risk, the rate of premium is always a shade lower than on *specific* policies upon the same subjects.

**335.** Unlike the *floater* proper, the *excess* policy never changes into general or specific insurance; it is confined to the *excess* over the direct only, and if there be no such excess, there

is no liability under the excess policy. But, in case of loss in *excess* of the specific insurance, the policy becomes specific in the proportions of the loss upon the several subjects covered, as in compound policies. (321.)

## FLOATING POLICIES.

**336.** A *floating policy*, as its name indicates, covers one or more kinds of goods in *several localities*—separate, independent risks, not subject to loss by a common burning—under *one sum* and one premium for the whole for the same owner. It is usually, by its conditions, confined to the sound *value* of the property in *excess* of the *specific* insurance that may be existing at the time on any of the property under its protection.

The difference between a *blanket* or *general policy* (327) and a *floater* is that the latter covers in several localities, while the former covers several subjects in one locality only.

**337.** In England it is, by statute, always made subject to average, and hence is called an "*average policy*." In this country it is optional to insert or omit the conditions of average, although it is usually inserted, for so broad is the scope of the contract in this form, that the omission of this protecting clause would work heavy injury to the underwriter, when in contact with co-insurers with the clause.

**338.** The following is the ordinary form of the English floating policy, with the excess and average clauses combined :

On (merchandise) the insured's own, in trust or on commission, for which he may be responsible (in no case exceeding the market value of the goods immediately anterior to the fire), in or on all or any of the warehouses, vaults, cellars, sheds, crane-houses, wharves, yards or quays, and (if not under protection of a marine policy) on board of any vessel or craft within the limits of the .....docks, and in all or any of the uptown warehouses belonging to the said docks (if in the port of London), subject to the conditions of average hereinafter mentioned.

"It is at the same time agreed that if any specific parcel of goods included in the terms of this policy, or such goods in any specified building or buildings, place or places, within the limits of this insurance, shall at the time of any fire be insured in this or any other office, whether subject to average or not, this policy shall not extend to cover the same, excepting only as far

as relates to any *excess of value* beyond the amount of such specific insurance or insurances, which said *excess* is so declared to be under the protection of this policy, and subject to average aforesaid.

"It is hereby declared and agreed, that wherever a sum insured is declared to be subject to the conditions of average, if the property so covered shall at the breaking out of any fire be collectively of greater value than the sum insured thereon, then the insurance company shall pay or make good such portion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall first happen." See "Average Clause," *supra*.

**339.** The following is the much preferable New York form, without the excess clause:

On merchandise hazardous, not hazardous, and extra hazardous, owned or held in trust, or on commission, or on joint account with others, or sold but not delivered, and not under the protection of a marine policy or specific insurance, in all or any of the brick or stone warehouses, and while in transitu in or on any of the streets, yards or wharves, in the cities of New York, Brooklyn, Jersey City and Hoboken, and in any ship or vessel in the port of said cities, subject to the following conditions of average and exception clause:

"It is hereby declared and agreed that, in case the property aforesaid in all the buildings, places or limits included in this insurance, shall, at the breaking out of any fire or fires, be collectively of greater value than the sum insured, then this company shall pay and make good such portion only of the loss or damage as the sum insured shall bear to the whole value of the property aforesaid at the time when such fire or fires shall first happen."

**340.** When it contains the *excess* clause, as in the English form, above cited, the intention is to confine the liability under the policy to only such *excess of value* beyond any specific co-insurance, that may exist upon a part or all of the property in any of the specified localities embraced within the range of the policy, which specific co-insurance must be first exhausted in payment of such loss before the *floater* can, under its terms, be called upon to contribute. But should loss occur to any of the *property* under its protection in *excess* of the specific insurance thereon, it will be held to contribute its ratable proportion of the loss upon such *excess of value* (not excess of loss) in any of the localities covered by the policy over the amount of specific insurance thereon, to the extent of such excess (**308**) as indemnity to the insured may require.

**341.** The object of the *floater* is to cover any deficiency in the specific insurance that may chance to arise on the occurrence

of loss in any locality under its protection. It may be said to *float over the entire property at risk*, ready at any moment to drop in that locality where, by reason of loss, its presence may be required to make insured's indemnity complete.

**342.** Without the *excess clause*, as in the New York form, the *floater* becomes a *general or blanket* policy, and liable to contribute with co-insurers, if any, pro rata, subject, however, to the conditions of average, if inserted. Should there be no specific co-insurance within the range of the *floater*, in either form, the policy then becomes liable to its full extent for any and all losses upon any of the property covered by it.

**343.** *Floaters*, when made *excess policies by their own conditions only*, as in the English form, do not thereby escape the operation of the contribution clause when found in connection with other co-insuring policies. Like the *excess policy* (328) under the contribution clause (1991), the existence of the *excess clause* should be specifically recognized and consented to in the co-insuring policies upon any portion of the risks within the range of the *floater*; otherwise, *as between the assured and the co-insuring policies*, such *floater* will be held in the adjustment as "other insurance," and liable to contribution, subject to average, upon any or all of its concurrent subjects, its terms and conditions being operative only between the company and its policy-holder; for no company can, *by its own conditions*, practically annul and override those of another company. (177.) In case of a partial loss falling within the amount of specific insurance, the *floater* covering only the *excess of value* above the specific insurance would escape scot free, and leave the policy-holder liable as self-insurer, with the specific policies in its stead.

**344.** In England, *floaters* are recognised as *excess policies*, when in contact with *specific* insurance, only by tacit consent of the companies. The contribution clause, contained in all of the policies, specific or average, is lost sight of to give effect to the *excess clause*, which is found only in the latter, thus presenting the anomaly of an equitable and universally recognized condition of all policies being thrust aside to give place, to say the

least of it, to an unjust special one, found only in one class of policies.

**345.** In speaking of this peculiar feature of the English policy, Mr. Atkins asks very pertinently:—

“Upon what principle is it that the company issuing an average policy inserts a clause, declaring that the specified policy is bound to settle first and abandon its own condition of paying only *pro rata*, thus furnishing the spectacle of one office practically annulling by its own act the conditions of another company?” • • • • • “But no better reason can be assigned for office A allowing office S to annul the condition of its policy in the manner referred to, than the intention which A has to return the compliment in kind at the first opportunity which may present itself.” He further adds: “The rule probably had its origin in the purpose of regulating losses when different kinds of policies existed in the same offices. This has been taken up and *misapplied* in the cases where such varied forms of policies exist in different companies.” (423, 2004.)

**346.** English practice holds that under the average clause the amount of contributive insurance is limited to the *pro rata* proportions that the value at risk may bear to the amount of the policy thereon at the time of the loss. In this sum, and not the face of the policy, contribution will be made with co-insurers, of whom the insured is one. (2136.)

**346a.** It will be noted in this connection that the New York form of the floating policy omits this objectionable excess feature as to specific co-insurance, leaving to such the full right of co-contribution, when in contact upon the loss of the same item, subject, however, to the average clause of the floater.

For authorities see 323, *supra*.

#### CONCURRENCY OF POLICIES.

**347.** Policies are *concurrent* when they cover, under the same conditions of liability, upon the same subjects; in the same or other proportions; in the same or different amounts; at the same premium rate; in the same locality and for the same parties as insureds. Thus co-insuring policies, whether of the specific, excess or floating form, are said to be concurrent when they cover the subject at risk alike in all essential particulars as to conditions and subjects.

**348.** Policies are *non-concurrent* when they cover the same

subjects, in whole or in part, or combined with others for the same owners and in the same locality, either by general, floating, or excess forms. Compound policies, Class 2 (2085), and policies subject to average are non-concurrent as to policies not so subject.

**349.** Policies partially concurrent, *i. e.*, covering the same subject concurrently with one covered by neither of the others, are sometimes called "*mixed*."

**350.** While, as a rule, it is highly desirable that all policies covering upon the same subjects should be made concurrent so far as circumstances will admit, and thus tend to prevent misunderstandings as to co-insuring liability, it is not essential to a correct and proper adjustment of losses under non-concurrent insurances that the policies should cover exactly alike. All that will be necessary is, that each policy should contribute to the extent of its own liability under its own terms and stipulations.

**351.** It will be the adjuster's duty to settle as he finds the several contracts to read, and not to construe them as he may think they *ought to read*. Non-concurrent policies are just as easily adjusted when ordinarily clear, and the adjuster understands his business, as any other kinds of insurance.

**352.** The English offices operating through agents in so many different portions of the world, where adjustments of loss claims are made under various forms and conditions of the policy, recommend an uniformity of wording for security and convenience of both the insured and the company.

#### PRO RATA CLAUSES.

**353.** Pro rata or proportional clauses, used in fire insurance practice for the purpose of indicating the several proportions in which two or more factors shall be operative, are of several forms, as what is commonly known as the average clause; the contribution clause (1991); the three-quarter or other percentage clauses (386); the co-insurance clause, and others to the same effect, the relative force of which may be described as two-fold.

**354. First**—The *pro rata clause* proper; where the relative terms of the proportions are of *equal value or extent*, as *value to value*—*value* of property lost to the *value* of the property at risk; or, *value* of property in one of several locations to the *value* in all; or, the amount of one policy to the aggregate amount of all of the policies on the same risk; that is *insurance to insurance*, or *loss to insurance*.

**355. Second**—The *co-insurance clause*; where the relative terms of the proportions are of *unequal value or extent*, as *insurance to value*,—amount of *insurance* to the *value* of the property at risk. **(366.)**

**356.** The object of the *pro rata clause* is to equalize the proportions of the risk between insurers and insured, by compelling the latter to bear an agreed *pro rata* share of any loss himself, greater or less as the property may be partially or fully covered by insurance, as in *co-insurance*; or, as the maximum or minimum of insurance may approximate the aggregated value of the property at risk, as in the *pro rata clause* proper, and thus create and maintain an interest, on the part of the insured, in the preservation and safe guardianship of the property under the protection of the policy, which might not otherwise exist.

**357.** The presence of the *pro rata clause*, in either of the above-cited forms, reduces the indemnity from a *positive* liability to pay the loss up to the amount insured, in any case, to a *relative* liability for the amount of any loss, either in the proportion that the sum insured bears to the value of the property at risk, as in *co-insurance* **(366)**, or in such proportion as the value of the property lost or damaged may bear to the value of all of the property at risk at the time of such loss, as under the *pro rata clause* proper **(354)**. Hence the omission of this clause, in one or the other of its forms, from any policy where it can be used, throws so great an advantage upon the side of the insured in the adjustment of loss claims, that such omission can be viewed in no other light than as equivalent to a very great reduction of the premium rate, as is very apparent where the compound form of policy, without the clause, is used.

Under either the pro rata or the co-insurance form, the insured becomes a co-insurer, though the basis of the contribution is different; in the one case it is *value to value*, and in the other it is *value to insurance*.

**358.** The PRO RATA CLAUSE PROPER is usually appended to general or floating policies, covering property in several localities, so as to form a plurality of risks under one amount, so that the proportional factors are value in any one or more parts of the premises, to the aggregate value of the entire property at risk; or where a building, as an extended factory risk, forms a continuation of risks,—the *value* in any section to the *value* in all; or where there may be several kinds of property at risk in one locality—the *value* of one kind to the *value* of all.

It imports that all property under the protection of the policy shall contribute pro rata, *value to value* to the payment of loss on any portion thereof, without reference to the proportions of *insurance to such value*. Hence, unlike co-insurance, the *pro rata clause* is always operative, except in cases of the entire destruction of the property at risk, where there would be nothing left for pro rata distribution.

The following are some of the distribution forms of this clause :—

1. ON PROPERTY IN SEVERAL LOCATIONS.

**359.** "It is understood that the amount insured under this policy shall attach in each of the above-named localities, in such proportion as the *value* of the property contained in *each* locality shall bear to the aggregate *value* of the property at risk in all the above described localities."

2. THE SAME BUT MORE SIMPLE.

**360.** In case of loss, this insurance shall contribute and pay in proportion as the *value* in *each* building (or locality) shall bear to the *value* in *all* of the buildings (or locality) herein described, at the time of such loss.

3. LOSS AS THE BASIS OF CONTRIBUTION ON CONTENTS.

**361.** That all property at risk, contained in the within-described buildings, numbered from one to twelve inclusive, shall contribute to the *pro rata* payment of loss on any portion of such property in any one or more of said buildings at the time of such loss.

4. ON GOODS IN ONE LOCALITY.

**362.** The company shall be liable for loss or damage to any portion of the goods hereby covered, only in the proportion that the *sound value* of such lost or damaged goods shall bear to the *sound value* of all of the goods at risk at the time of such loss or damage.

For other *pro rata clauses* see contribution clause (1091); three-quarters clauses (336); loss by removal clause (1080); re-insurance clause (1016); graded co-insurance clauses, New York Standard Policy "Riders." (481.)

**363.** Form number one above is generally known as the "pro rata distribution clause," its operation being to distribute the aggregate insurance liability—not contribution—into the respective amounts to cover upon the several buildings in the ratios of the *values* found in *each* to the aggregate *value in all* at the time of any loss; and in these amounts contribution will be made with co-insurers, if any, or in these ratios of losses to insurances, the insured will be paid as if the policy had been so written.

**364.** From the nature of the clause it is applicable only to collective or floating policies; there is nothing said therein as to contribution or co-insurance, or in what manner the losses shall be paid. It simply fixes in advance the relative proportions in which the policy shall be apportioned to each subject or locality on the occurrence of loss to either, for which purpose a knowledge of the value at risk in each building at the time of loss will be necessary upon which to base the distribution

#### EXAMPLE.

**365.** A policy covers aggregate value under a general policy to the amount of \$50,000, in four sections of a furniture factory, described as sections A, B, C and D, respectively, with the "proportional distribution clause" number one above.

After the loss the *value* of the stock in each of the sections, and the loss on sections A and C, were ascertained to be as follows: Aggregate value \$60,000; loss in A, \$18,000; in C, \$16,000.

Sections	Values therein.	Per cent. of total value.	Per cent. of Total Ins.	Losses.	Contribution.
A	\$20,000	33.3 p. c.	\$16,667	\$18,000	\$16,567
B	15,000	25 "	12,250	.....	.....
C	17,000	28.4 "	14,166	16,000	14,166
D	8,000	13.3 "	6,667	.....	.....
Totals.	\$60,000	100.	\$50,000	\$34,000	\$30,833

As the losses are in excess of the proportional amounts of insurance, such amount is the contributive liability of the policy, like any other loss above the insurance thereon. The co-insurance clause is sometimes added to the policy to indicate how the payments shall be made, in which event, in this case, the value being \$60,000, and the insurance \$50,000, the insured would be a co-insurer to the \$10,000 excess, and bear his proportion of the loss in that ratio.

In forms 3 and 4 above, there is no distribution of the insurances in the buildings named, the liability is simply as the loss in each building bears to the loss in all of them.

### THE CO INSURANCE CLAUSE.

#### COMMONLY CALLED THE AVERAGE CLAUSE.

**366.** This form of the *pro rata clause* is the universal written condition of marine insurance. Its introduction in the fire branch, where it is the exception and not the rule, never being operative therein unless so expressed, and then only in the policy containing it, is comparatively of modern date, A. D. 1828, under statute in England (9 Geo. IV. ch. 14), to protect the revenue derived from insurance duty from frauds of insurers or insureds.

**367.** By this Act insurer and insured were compelled to place a certain fixed amount upon each distinct building or contents, or where the fixing of such value was not practicable from any cause, being in the term variable over the several buildings, and the insurance was in one sum upon all, the insured could only recover *pro rata* for any damage that the amount of the property at risk bore to the insurance thereon at the time of the fire, so that if he were under-insured at the time of the fire, he was supposed to have, in so far, evaded his fair share of the insurance duty; hence Government would not permit him to receive from his insurers any sum upon the amount for which he had practically not insured himself. It was this Act which imposed the "conditions of average" as now used, and opened the way for the writing of general or floating policies "subject to average" under the following stipulation :

**368.** "It is hereby declared and agreed that whenever a sum insured is declared to be subject to the conditions of average, if the property so covered shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon, then this company shall pay or make good such proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen."

**369.** In this connection the term "average" is an evident misnomer, having but little affinity with the subject to which it is applied. Hence in America the word has been generally dropped, and the term *co-insurance* substituted as more fittingly expressing the meaning intended. In the marine practice the word average has a number of meanings (3, 4, 5), besides "average clauses" of several varieties. But, however used, it is always synonymous with contribution in addition to that of ratio.

**370.** Why this principle was not found in the earlier fire policies as it was used in the marine, is not clear; some of the old fire offices—the London Corporation, 1734—disclaimed all use of it in its policies, so that it was not until its use in certain cases was made obligatory upon the companies, that it became general.

**371.** The *co-insurance clause* is a simple stipulation, that the insured shall bear such proportion of any loss as the *value* of the property at risk, *in excess* of the insurance thereon, shall bear to the amount of insurance thereon, or to the interest of the insured therein; or, in other words, that the underwriter shall be liable for such proportion only of the property at risk, lost or damaged by fire, as the amount of his insurance may bear to the value of the entire property at risk, or the interest of the insured therein; the insured being held as co-insurer to the extent of any excess of value above such insurance. When policies are said to be "subject to average," this is the clause referred to.

**372.** It is based upon the equitable principle, that where the insured elects to stand his own insurer upon any portion of his property, paying premium only upon that portion under direct insurance, he should be regarded in the light of, and treated in contribution to losses under his policies, as if he were another company interested to the same amount as the excess, and, consequently, held liable for a corresponding portion of the loss.

**373.** The enforcement of this clause would compel a larger amount of insurance to be taken upon property, in order to obtain a full or even an approximate indemnity in case of heavy losses; and so far as the insurer is concerned, there would be contribution to the full value of the property at risk, either by direct policies or by the insured as co-insurer.

**374.** The co-insurance clause is applicable to the same classes of risk as the *pro rata clause proper*; but unlike that clause, it makes only such portions of the property at risk as may be in excess of the insurance thereon, instead of the entire property, contribute to the payment of a common loss; and where the insurance equals the value of the property at risk, this clause is not operative.

The following are some of the customary forms of this clause;

1. *General Co-insurance.*

**375.** If the value of the property at risk shall be greater than the amount hereby insured thereon, the insured shall be considered a co-insurer for such excess, and all losses shall be adjusted accordingly.

2. *Three-fourths Co-insurance.*

**375a.** The insured hereby agrees to maintain insurance upon the property covered by this policy, to the extent of at least three-fourths of the actual cash value thereof; or failing so to do, at the time of any loss under this insurance, he shall stand as co-insurer herewith, to the extent of such deficit of value, and in that capacity bear his due proportion of such loss. (390.)

3. *GERMAN FORM.*

**376.** If at the time of the fire the value of the articles or property covered by this policy exceeds the amount of the insurance, then the party insured shall be considered as his own insurer for such surplus, and in such capacity shall bear his proportionate share of the loss.

4. *FRENCH CLAUSE.*

**377.** If, at the time of a fire, the value of the objects covered by the policy is found to exceed the sum total of the insurance, the insured is considered as having remained his own insurer for that excess, and he is to bear, in that character, his proportion of the loss.

5. *HAMBURG FORM.*

**378.** If the insured property, in part or in whole, is elsewhere insured; or, if the value of the property on hand at the time of the fire exceeds the amount of insurance; or, if a self-insurance condition on the part of the insured is expressly specified, then the damage will be made good *pro rata*.

## 6. ENGLISH FORM.

**379.** "I. It is hereby declared and agreed that whenever a sum insured is declared to be subject to the conditions of average, if the property so covered shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon, then this company shall pay or make good such a proportion only of the loss or damage as the sum insured shall bear to the whole value of the said property, at the time when such fire shall first happen."

**380.** "II. But it is at the same time declared and agreed that if any property included in such average shall, at the breaking out of any fire, be insured by any other policy which, whether subject to average or not, shall apply to a part only of the buildings or places, or of the property to which such average extends, then this policy shall not cover the same, excepting only as regards any excess of value beyond the amount of such mere specific insurance, which said excess is declared to be under the protection of this policy and subject to average as aforesaid."

**381.** "III. And it is further declared and agreed, that if the assured shall claim under this policy for loss or damage to property embraced in the terms of any average policy, extending as well to other buildings or places, or to other property not included in the terms of this insurance, and if at the breaking out of any fire there shall not be any property in such other buildings or places, or any such other property actually at risk to be protected by such policy, then, so far as regards the settlement of any claim under this policy, the terms and liability thereof shall be held to be concurrent, in all respects, with those of such other policy."

The following clause was used by specific policies when brought into contact with average policies upon the same loss.

**382.** "IV.—In case of the assured holding from this or any other Company any policy subject to average on the property covered by this insurance, then this policy shall be subject to average in like manner."

**383.** Where the insured is by agreement to maintain a given amount of concurrent insurance upon his property or interest covered by the policy, or stand as *co-insurer* for any deficiency in such amount in case of loss, or, in other words, that the adjustment shall be made upon the basis of the amount of insurance agreed to be maintained, whether existing or not at the time of any loss, the following is the customary form used in the policy :

**384.** It is understood and agreed that the insured shall effect and maintain not less than ——— dollars of (specific or excess) insurance, concurrent herewith, or be deemed co-insurers to the extent of any deficiency of such sum, at the time of any loss under this policy. (375a.)

## LIMITATION CLAUSES.

**385.** It has become common of late years to insert limitation clauses of two kinds in policies; the first to restrict the amount of insurance to be carried upon any risk, and known as the *value* clause, and the other to limit the liability of the company in the event of loss, and known as the *loss* clause, such limits being indicated by some agreed percentage.

## 1. THREE-FOURTHS VALUE CLAUSE.

**386.** This stipulation limits the amount of the insurer's liability to three-quarters of the value of the insured's stock not exceeding the amount of the policy, leaving him a *self-insurer* to the extent of twenty-five per cent. of the value. If the value of property lost exceeds three-quarters of the property at risk, the company pays as for a total loss; if the loss be less than the face of the policy, the company pays in the ratio that the value of the loss bears to three-fourths of the value of the total stock, the insured being self-insurer for any deficiency. This form of clause is peculiar to the Southern section of the United States.

**387.** EIGHTY PER CENT. CO-INSURANCE CLAUSE is another value limitation clause, having its origin in the Western States.

It is comparatively a modern form, about A. D. 1884, and was at first applied to lumber chiefly. It reads as follows:—

**388.** "It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that the assured shall maintain insurance on the property covered by this policy, to the extent of four-fifths of the actual cash value thereof, and failing so to do, the assured shall be a co-insurer to the extent of such deficit, and in that event shall bear his, her, or their portion of any loss. (375a.)

"It is, however, mutually understood and agreed, that in case the total insurance shall exceed four-fifths of the whole actual cash value of the property insured by this policy, the assured shall not recover from this company more than its *pro rata* share of four-fifths of the whole actual cash value of such property."

Under the first paragraph of the clause the insured is compelled to carry insurance to an amount equal to four-fifths of the value of the property at risk, or become himself a co-insurer for any deficiency in that proportion of the value at risk; but he is not confined to that proportion; he may, at his option, cover the

property to its full value. But under the second paragraph of the clause, in such case, the liability of the companies under the clause is limited to pro rata shares of eighty per cent. of the value only, should the loss be partial only, or, if equal to or in excess of such eighty per cent. of value, the loss would be total, as to the insurance under this clause, including the insurer as a co-insurer to the extent of any deficiency there might be in such amount of insurance.

This clause is now applied to merchandise risks, and a discount of 15 per cent. from tariff rate is allowed where made part of the policy.

## 2. THREE-FOURTHS LOSS CLAUSE.

The following is the Hamburg form of this clause :—

**389.** In case of loss by fire happening in the premises occupied by or within the control of the insured, this company will only be liable and bound to pay three-fourths of the amount of loss so ascertained and proved; and in case of other insurance, only the proportion that this policy bears to the whole amount insured thereon.

The following form was introduced into the Southern States about A. D. 1855, and known as the "Country Clause," as it was only used for out-of-town risks :—

**389a.** "It is understood and agreed to be a condition of this insurance, that in case of any loss or claim under this policy, this Company is and shall be liable for only three-fourths of the same, not exceeding the sum herein insured, and that one-fourth shall be borne by the insured."

Another loss limiting clause is found in the eighty per cent. co-insurance clause above. (**388.**)

## 3. GRADED CO-INSURANCE CLAUSE.

**390.** This is the *eighty per cent. value clause* adapted to any given percentage of value of property at risk that may be covered by insurance, the insured being made a co-insurer to the extent of any deficiency in the insurance below the percentage upon which the premium is predicated. It is termed "graded" from the fact that the rate of premium is graduated or fixed to conform to the relative percentage of value covered by the policy to the aggregate value of all of the property at risk, the less the amount of insurance to value, the higher the premium rate. (**1545.**)

This form originated at Chicago about 1886, and extends to but *four* percentages. Starting from the basis rate of one per cent. for 80 per cent. of value at risk, covered by the policy, the gradations are made as follows under the clause:—

**390a. CLASS 1.** Basis rate \$1.00.

"It is a part of the consideration for this policy, and the basis on which the rate of premium is fixed, that the assured shall maintain insurance on the property described by the policy, to the extent of at least *eighty* (80) *per cent.* of the actual cash value thereof; and failing so to do, the assured shall be a co-insurer to the extent of such deficit; and to that extent shall bear his, her, or their proportion of any such loss."

**390b. CLASS 2.** Basis rate \$1.10.

Clause same as Class 1, substituting 70 per cent. as the value to be covered, and adding 10 cents to the basis rate.

**390c. CLASS 3.** Basis rate \$1.20.

Clause same as Class 1, substituting 60 per cent. as the value to be covered, and adding 20 cents to the basis rate.

**390d. CLASS 4.** Basis rate \$1.40, on a value of 50 per cent.

These additions to the basis rates for reduced lines of insurance are evidently arbitrary, mere guessing that if 80 per cent. of value covered be worth \$1.00 per cent., then 50 per cent. of value is worth \$1.40. The lines and rates evidently have no mathematical reference to each other.

**391.** As the underlying principle developed by this graded method goes far to solve, if it does not actually solve, the long time vexed question as to "what is an average line of insurance," and although it cannot fix a basis rate upon any given class of risks, it so far solves the problem as to determine the relative proportion that a basis rate, or one assumed to be such, should bear to the variable percentages of value covered by insurance. It is important that the additions to an assumed basis rate on an agreed valuation should be correctly estimated, and not be the subject of guessing.

**391a.** From a very clear and elaborate article appearing in March, 1887, from the pen of W. A. Hawley, Esq., of Philadelphia, upon the subject of graded rates to meet reduced lines of

insurance upon full values at risk—wherein such rates are *mathematically* computed, and hence far more satisfactory than by the “rule of thumb” promulgated, as above, by the Chicago Board—the following proposition for computing the true rates is deduced:

The cash value of the entire property at risk under insurance is always a known quantity, and becomes the basis factor in the computation. The assumed adequate annual rate for a given risk is also a known quantity; and the sum to be insured being the variable quantity, the unknown quantity will be the equitable rate in the graded scale. Then, if one per cent. be a fair assumed rate upon a given risk, and eighty per cent. of the value at risk be a fair average line of insurance to be carried upon such hazard, the proposition will stand: “As the amount of insurance carried is to 80 per cent. of the total cash value, so will be the rate assumed to the true or ‘equitable’ rate sought for.” Any other percentage of cash value, or any other assumed rate of premium can be computed in the same manner.

The following examples, under three different percentages of value covered and of assumed rate, will be used to illustrate the proposition:—

1. Rate 100 cents. Value written 80 per cent.
2. “ 75 “ “ “ 90 “
3. “ 60 “ “ “ 40 “

**391b. EXAMPLE 1.**—Annual rate, 100 cents; Value covered, 80 per cent.

PER CENT. INSURED.	VALUE COVERED.	ASSUMED RATE.	EQUITABLE RATE.
As 100 p. c. is to 80 p. c., so is	100 cents to	80 cents,	rate sought.
“ 95 “ “ 80 “ “	100 “	84 “	“
“ 90 “ “ 80 “ “	100 “	89 “	“
“ 85 “ “ 80 “ “	100 “	94 “	“
“ 80 “ “ 80 “ “	100 “	100 “	“
“ 75 “ “ 80 “ “	100 “	107 “	“
“ 70 “ “ 80 “ “	100 “	114 “	“
“ 65 “ “ 80 “ “	100 “	123 “	“
“ 60 “ “ 80 “ “	100 “	133 “	“
“ 55 “ “ 80 “ “	100 “	145 “	“
“ 50 “ “ 80 “ “	100 “	160 “	“
“ 40 “ “ 80 “ “	100 “	200 “	“

**391c. EXAMPLE 2.**—Annual rate, 75 cents ; Value covered, 90 per cent.

PER CENT. INSURED.	VALUE COVERED.	ASSUMED RATE.	EQUITABLE RATE.
As 100 p. c. is to 90 p. c., so is		75 cents to 68 cents,	rate sought.
" 90 " " 90 " "		75 " 75 "	"
" 80 " " 90 " "		75 " 84 "	"
" 70 " " 90 " "		75 " 96 "	"
" 60 " " 90 " "		75 " 112 "	"
" 50 " " 90 " "		75 " 135 "	"
" 40 " " 90 " "		75 " 169 "	"
" 25 " " 90 " "		75 " 270 "	"

**391d. EXAMPLE 3.**—Annual rate 60 cents ; Value covered 40 per cent.

PER CENT. INSURED.	VALUE COVERED.	ASSUMED RATE.	EQUITABLE RATE.
As 100 p. c. is to 40 p. c., so is		60 cents to 24 cents,	rate sought.
" 80 " " 40 " "		60 " 30 "	"
" 70 " " 40 " "		60 " 34 "	"
" 60 " " 40 " "		60 " 40 "	"
" 50 " " 40 " "		60 " 58 "	"
" 40 " " 40 " "		60 " 60 "	"

The verbal form, with co-insurance clause, is the same as the Chicago form. The superiority and exactness of these formulæ, are at once apparent, and need no commendation.

**391e.** The manner of applying this method is very simple. The applicant names the value of the property and the percentage of such value that he desires covered ; the annual rate is fixed, and under this rate the percentage is found, with the equitable rate for such value. Should loss occur, and on adjustment the value covered be found less than the percentage covered by the rate charged, the insured will become a co-insurer for such deficiency ; or, in other words, the apportionment of insurance will be made upon the percentage agreed upon, whether existing at the time of the loss or not.

**391f.** As to the insured, the equity of the graded clause is at once apparent ; he pays premiums only adequate to the hazards of his property ; he becomes a co-insurer only at his own option, and in the event of loss he recoups the insurance money

up to the sum of the loss, within the amount of the policy, without deduction—if he maintain the amount of insurance at the time of the loss, agreed upon when the insurance was taken—the co-insurance clause becoming operative only should the adjustment of the loss reveal the fact of deficiency in the amount of insurance requisite for the value of the property at risk, and then only to the amount of such deficiency, as shown in the examples under the “eighty per cent. clause” *supra*. Under the ordinary pro rata (average) clause, he would be compelled to carry a line of insurance up to the full value of the property, or become a co-insurer for any deficiency; whereas, under the graded clause he can, at his option, place any portion of that value under insurance, without necessarily becoming a co-insurer for the remaining uncovered portion, thus obviating the chief objection of insureds to the pro rata (average) clause.

### THE ENGLISH POLICY.

English policies are of two kinds, *specified* and *average* or *floating*.

**392.** The *specified* policy covers property in a *single locality*, though it may be general in form, embracing several subjects (**308, 2163**), but is never subject to average.

**393.** The *average policy* or *floater*, as it is indiscriminately called, covers various subjects in several places, but is always made subject to average. (**336.**)

**394.** The *Colonial forms*, being mostly copies of the English policy, will be ranked among them.

The following forms are presented :—

The ROYAL EXCHANGE, of London..... A. D. 1720.  
 The HAND-IN-HAND, specific modern form..... London.  
 The ————— (now retired from business), Glasgow.  
 The NEW ZEALAND Insurance Company..... Auckland.  
 The PACIFIC FIRE AND MARINE Insurance Company, Sydney, N. S. W.  
 ENGLISH AVERAGE POLICY form..... London.

## THE ENGLISH POLICY : A. D. 1787.

By the Corporation of the ROYAL EXCHANGE ASSURANCE OF  
HOUSES AND GOODS FROM FIRE.

**395.** This present Instrument or Policy of Assurance witnesseth, That Whereas ——— agreed to pay into the Treasury of the Corporation of the Royal Exchange Assurance at their Office on the Royal Exchange, London, for the assurance of ——— from Loss or Damage by Fire. NOW KNOW ALL MEN BY THESE PRESENTS, That the Capital Stock, Estate, and Securities of the said Corporation shall be subject to and liable to pay, make good and satisfy unto the said Assured, ——— Heirs, Executors, or Administrators, any Loss or Damage which shall or may happen by Fire to the said Goods ——— aforesaid (except such Goods as Hemp, Flax, Tallow, Pitch, Tar, Turpentine, Glass, China, and Earthenwares, Writings, Books of Accounts, Notes, Bills, Bonds, Tallies, Ready Money, Jewels, Plate, Pictures, Gunpowder, Hay, Straw, and Corn unthreshed) within the space of twelve Calendar Months from the Day of the Date of this Instrument or Policy of Assurance, not Exceeding the sum of ———; and shall so continue, remain, and be subject and liable, as aforesaid, from Year to Year, to be Computed from the ——— Day of ——— in Every Year, for so long Time as the said Assured shall well and truly pay, or Cause to be paid, the Sum of ——— into the Treasury of the said Corporation, on or before the ——— Day of ——— which shall be in Each succeeding Year; and the said Corporation shall agree thereto by accepting and receiving the same; which said Loss or Damage shall be paid in Money immediately after the same shall be settled and adjusted; or otherwise, if the said Loss or Damage shall not be adjusted, settled and paid within Sixty Days after Notice thereof shall be given to the said Corporation, by the said Assured, that then the said Corporation, their Officers, Workmen, or Assigns, shall, at the Charge of the said Corporation, at the End and Expiration of the said Sixty Days, provide and supply the said Assured with the like Quantity of Goods of the same Sort and Kind, and of Equal Value and Goodness with those burnt or damaged by Fire. PROVIDED ALWAYS, NEVERTHELESS, and it is hereby declared to be the true Intent and Meaning of this Deed or Policy, That the said Stock, Estate, and Securities of the said Corporation shall not be subject or liable to pay or make good to the Assured any Loss or Damage by Fire, which shall happen by any Invasion, Foreign Enemy, or any Military or usurped Power whatsoever; PROVIDED ALSO, That this Deed or Policy

shall not take Place or be binding to the said Corporation until the Premium for one Year is paid, or in case the said Assured shall have already made, or shall hereafter make, any other Assurance upon the Goods aforesaid, unless the same shall be allowed of and so specified upon the Back of this Policy; Or if the said ———, at the time when any such Fire shall happen, shall be in the Possession of, or let to any Person who shall use or Exercise therein the Trade of a Sugar-Baker, Apothecary, Chemyst, Colour-man, Distiller, Bread or Biscuit-baker, Ship or Tallow Chandler, Stable-keeper, Inn-holder, or Maltster, or shall be made use of for the stowing or keeping of Hemp, Flax, Tallow, Pitch, Tar, or Turpentine; but that in all or any of the said Cases these Presents, and every Clause, Article, and Thing herein Contained, shall cease, determine, and be utterly void and of none Effect, or otherwise shall remain in full Force and Virtue.

In Witness whereof the said Corporation have caused their Common Seal to be hereunto affixed, the ——— Day of ———, in the ——— Year of the Reign of our Sovereign Lord ——— by the Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith, &c., and in the year of our Lord One thousand ——— hundred ———.

N. B.—This Policy to be of no Force, if assigned, unless such Assignment be allowed by an Entry thereof on the Books of the Company.

## REMARKS.

**396.** This is a copy of one of the earlier, if not earliest forms of the fire policy of this venerable company (A. D. 1720), upon which, together with that of the Sun Fire Office, many of the earlier decisions of the courts are founded, and upon which most of the subsequent policies were based.

It presents a few points worthy of notice, viz. :—

List of *exceptional articles*; the original of the present extended classification of hazards. (**482.**)

*Duration*: from the day of the date; for twelve calendar months. (**846.**)

*Renewal* of the policy provided for in a form still in use in some English policies. (**874.**)

*Reinstatement*.—This underlying principle of indemnity is here first found; but it seems to be restricted to "goods," no

mention being made of buildings. But we find reinstatement of buildings in the Hand-in-Hand policy of A. D. 1669. (1836.)

*Premium.*—Here we have another “principle” of the insurance contract, that the *premium* must be paid before the contract is completed. (775.)

*Other insurance* must be noted, and indorsed on the policy, but no mention is made of *pro rata* contribution, which was incorporated into the contract some years afterward. (968.)

*Invasion, foreign enemy, military or usurped power.*—This provision bears date 1720, as we learn from a charge of Lord MANSFIELD, in a case where it was called in question, and is the *first* notice we have of it; though contemporary companies, the London Assurance and the Sun Fire Office, had the same. This clause was the result of the incorporation of those companies occurring so soon after a rebellion. (1674.)

*Hazardous occupancy*, after insurance, voids the policy as in the present form.

*Assignment* without notice and consent voids the policy.

#### THE ENGLISH POLICY, SPECIFIED.

397. The following is a copy of the present form of policy in use by that venerable institution known as the

#### HAND-IN-HAND

##### FIRE AND LIFE INSURANCE SOCIETY.

*Instituted*, A. D. 1696. *Extended to Life Insurance*, 1836.

THIS POLICY OF INSURANCE Witnesseth that ———, hereinafter called the *insured*, having paid to the HAND-IN-HAND FIRE AND LIFE INSURANCE SOCIETY, hereinafter called the Society, the sum of ———, for insuring against loss or damage by fire, as hereinafter mentioned, the property hereinafter described, in the several sums following, namely:—

(Description of property:)

Policy— No.—. Canceled. Return Premium —.

The Society hereby agrees with the insured (but subject to the conditions indorsed hereon, which are to be taken as a part of this policy), that if the property above described, or any part thereof, shall be destroyed or damaged by fire, at any time

between the ——— 18—, and the ——— 18—, *both inclusive*, or at any time afterwards, so long as the insured, or his representatives in interest, shall pay to the Society, and it shall accept the sum required for the renewal of this policy, on or before the ——— in each succeeding year, the Society will, out of its funds or property, pay or make good all such loss or damage, to an amount not exceeding in respect of the several matters above specified, the sum set opposite thereto respectively, and not exceeding in the whole the sum of ———.

PROVIDED, NEVERTHELESS, That the funds or property of the Society shall alone be liable to satisfy this policy, and that no director, trustee, or other member of the Society shall be personally liable, whether in body, estate, or otherwise, however, to make good, either in whole or in part, any claim or demand whatsoever under this policy.

IN WITNESS WHEREOF, this policy has been duly executed, this ——— day of ———, 18 —, by ———.

Signed, sealed and delivered in the presence of	}	_____	}	Directors	[SEAL.]
		_____		of the	[SEAL.]
		_____		Society.	[SEAL.]
Examined, _____					

### 398. THE CONDITIONS REFERRED TO IN THIS POLICY.

1. Any material misdescription of any of the property proposed to be hereby insured, or of any building or place in which property to be so insured is contained, or any mis-statement of or omission to state any fact material to be known for estimating the risk, renders this policy void as to the property affected by such misdescription, mis-statement, or omission respectively.

2. If, after the risk has been undertaken by the Society, anything whereby the risk is increased be done to property hereby insured, or to, upon, or in, any building hereby insured, or any building or place in which Property hereby insured is contained; or, if any property hereby insured be removed from the building or place in which it is herein described as being contained, without, in each and every of such cases, the assent or sanction of the Society signified by indorsement hereon, the insurance as to the property affected thereby ceases to attach.

3. This policy does not cover property held in trust or on commission, unless expressly described as such; nor china, glass, looking-glasses, jewels, clocks, watches, trinkets, metals, curiosities, manuscripts, government stamps, prints, paintings, drawings, sculptures, musical, mathematical or philosophical instruments, patterns, models, or moulds, unless specially mentioned in the policy; nor deeds, bonds, bills of exchange, promissory notes, money, securities for money, or books of account; nor gunpowder; nor loss or damage by fire to property occasioned by or happening through

its own spontaneous fermentation or heating, or by or through invasion, foreign enemy, riot, or civil commotion; nor loss or damage by explosion, except loss or damage by explosion of gas in a building not forming part of any gas-works.

4. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law, unless notice thereof be given to the Society, and the subsistence of the insurance in favor of such other person be declared by a memorandum indorsed hereon by or on behalf of the Society.

5. On the happening of any loss or damage by fire to any of the property hereby insured, the insured is forthwith to give notice in writing thereof to the Society, and, within fifteen days at latest, to deliver to the Society as particular an account as may be reasonably practicable of the several articles or matters damaged or destroyed by fire, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; and in support thereof to give all such vouchers, proofs, and explanations as may be reasonably required, together with, if required, a statutory declaration of the truth of the account; and, in default thereof, no claim in respect of such loss or damage shall be payable until such notice, account, proofs, and explanations respectively are given and produced, and such statutory declaration, if required, is made.

6. If the claim be in any respect fraudulent, or if any false statutory declaration be made in support thereof, or if the fire was occasioned by or through the procurement or connivance of the insured, all benefit under this policy is forfeited.

7. The Society may, if it think fit, reinstate or replace property damaged or destroyed, instead of paying the amount of the loss or damage, and may join with any other company or insurers in so doing, in cases where the property is also insured elsewhere.

8. On the happening of any loss or damage by fire to any property, in respect of which a claim is or may be made under this policy, the Society, without being deemed a wrong-doer, may, by its authorized officer and servants, enter into the building or place in which such loss or damage has happened, and for a reasonable time remain in possession thereof and of any property hereby insured which is contained therein, for all reasonable purposes relating to, or in connection with the insurance hereby effected, and this policy shall be evidence of leave and license for that purpose.

9. If, at the time of any loss or damage by fire happening to any property hereby insured, there be any other subsisting insurance or insurances, whether effected by the insured or by any other person, covering the same property, this Society shall not be liable to pay or contribute more than its rateable proportion of such loss or damage.

10. In all cases where any other subsisting insurance or insurances, whether effected by the insured or by any other person, covering any property hereby insured, either exclusively or together with any other property in and subject to the same risk only, shall be subject to average; the insurance on such property under this policy shall be subject to average in like manner.

11. If any difference shall at any time arise between the Society and the insured, or any claimant under this policy, as to the amount of any loss or damage by fire, or as to the fulfilment or non-fulfilment of any of the conditions herein set forth, or as to any question, matter, or thing concerning or arising out of this insurance, every such difference, as and when the same arises, shall be referred to the arbitration and decision of two indifferent persons, one to be chosen by the party claiming and the other by the Society; or, in case of disagreement between them, then of an umpire, to be chosen by the arbitrators before entering on the reference; and the costs of the reference shall be in the discretion of the arbitrators or umpire, as the case may be, who shall award by whom and in what manner the same shall be paid; and the decision of the arbitrators or umpire, as the case may be, shall be final and binding on all parties, and this condition shall be deemed and taken to be an agreement to refer as aforesaid.

12. In all cases where this policy is void, or has ceased to be in force under any of the foregoing conditions, all moneys paid to the Society in respect thereof will be forfeited.

#### REMARKS.

**399.** It will be noted that the conditions of the present form of policy of this company (or "Society" as it terms itself) differ materially from those under the original "deed of settlement" (**80**), the former being strictly *mutual* in their provisions, while the present form is largely, if not entirely, on the *stock* principle, embracing most of the points common to the policies of all English stock companies.

As measured by the *American standard*, these conditions present the following peculiarities:—

*First.* The commencement and termination of the risk, both days being "inclusive." (**818.**)

*Second.* The premium. While provision is made for the payment of all premiums *after the first*, nothing is said about such *first* premium, further than its general acknowledgment in the body of the policy.

By *Section 1*, *misrepresentation* applies only to such portion of the policy as may be affected by it, and does not affect the entirety of the policy. (**946.**)

*Section 3.* The list of *memorandum articles* is more extended than in the American policy, while the *exceptional risks* include spontaneous fermentation or heating, and the explosion of gas in buildings other than gas-works. The kind of "gas"

here referred to has been legally decided to mean the common coal-gas of the gas companies, used for lighting and heating.

*Section 4. Alienation* is based upon the decision that "descent of title to heirs is not alienation." It also includes change of title by "operation of law," as not being alienation. American law has decided this to be correct, though the conditions of many of the American as well as English policies hold *all* transfers of title as *alienation*, requiring the consent of the insurers to make such transfer valid. (1085.)

*Section 5. Notice of loss* forthwith is the same as in the American form. It also requires *proof loss* to be produced "in fifteen days at latest," which amounts to nothing, as the only penalty for failure is, that the loss or damage shall not be payable until such notice, proofs, etc., shall be produced, whenever that may be, as there is no limitation as to time in which a loss shall be payable. (1649.)

*Section 8* gives the Society permission to enter upon the premises, and hold possession of the damaged property "for a reasonable time," which seems unnecessary, as such right is inherent under the nature of the contract. (1575.)

*Section 9. The contribution clause*, making the Society liable for its *ratable proportion* only of the *loss or damage*, not limiting such proportion to the *pro rata* of the *amount insured* as in the American forms generally. (2002.) Unlike the American form, this clause also includes as other insurance "*any other subsisting insurance, whether effected by the insured, or any other person, covering the same property.*" This would include insurances of mortgagors and mortgagees, lessor and lessees, and all of that class held in this country not to be "other insurance," under the customary contribution clause. (985.)

*Section 10* makes the policy of the Society subject to average when in contact with other policies on the same property that may have this clause; a very inequitable, if not illegal, provision is likely to entail loss upon the insured when he should not so suffer. It has recently been added to the National Board form of American policy. (383-2017.)

*Cancellation* is not provided for under any circumstances.

\*THE \_\_\_\_\_ INSURANCE COMPANY

OF \_\_\_\_\_.

[Agency Form.]

Fire Policy.

Sum insured, £ \_\_\_\_\_.

No. \_\_\_\_\_.

Premium, - - £ \_\_\_\_\_.

**400. WHEREAS,** \_\_\_\_\_ having paid the sum above stated to the authorized agent of the \_\_\_\_\_ INSURANCE COMPANY, being the premium on the sum insured by this policy, from the \_\_\_\_\_ (date), for *insuring against loss or damage by fire* the property hereinafter described, to the, amount or respective amounts hereinafter specified, not exceeding the sum of \_\_\_\_\_, namely:—

(Description of the property:)

**Therefore be it known,** That from the date aforesaid to \_\_\_\_\_, the capital stock and funds of the said COMPANY shall be subject and liable to pay to the INSURED any loss or damage by fire to the property above described, not exceeding the sum or sums of money respectively before written.

**And it is hereby provided and agreed,** That this policy shall be subject to the Conditions of Insurance printed on the back hereof, which shall be held as forming a part of the Policy.

**Declaring Always,** as it is hereby expressly provided and declared to be the true intent and meaning of these presents and which the insured by acceptance hereof specially assents and agrees to, That the capital stock and funds of the said Company, for the time being, shall alone be answerable for any demands arising under this Policy; and that no member or director of the said Company shall, under any circumstances, be liable for more than the amount of his or her share of the said capital stock or funds of the said Company, at the time the claim shall arise, as ascertained by the books of the said Company; and that such claim, as far as competent against shareholders individually, shall lie only against the persons who are shareholders at the time the same may arise, anything in this policy to the contrary or otherwise competent by law notwithstanding.

**In Witness whereof,** Two of the DIRECTORS and the MANAGER for the said COMPANY have, by the authorized attorney

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\*This company retired from business some years since.

and agent of the said Company, subscribed these presents at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year One Thousand Eight Hundred and \_\_\_\_\_.

\_\_\_\_\_, Director  
 \_\_\_\_\_, Director  
 \_\_\_\_\_, Manager

By their attorney,

\_\_\_\_\_ Agent of the said Company.

#### 401. CONDITIONS UPON WHICH THIS POLICY IS GRANTED.

I. That upon the insurance of any property, whether buildings or contents, the party or parties making the same shall specify of what materials the walls and roof of such buildings are respectively constructed, where situated, and by whom occupied; and whether as private dwellings, or how otherwise; whether any manufacture or hazardous trade be carried on, or any hazardous articles be deposited or kept therein, and, if so, describe the nature and qualities thereof; whether any steam-engine, furnace, kiln, stove, coakle, or other apparatus whereby heat is produced (common fire-places and ovens for domestic use excepted), be erected on the premises, and, if so, shall give a particular description of the nature and construction thereof respectively; and if such specification do not truly and circumstantially describe the property and the several particulars regarding the same as aforesaid, so that the nature and degree of the risk may be justly estimated, the policy or insurance thereon shall be null and void. The insurance on any building shall not be held to include anything outside thereof, such as porches, *appentis*, sheds, or other buildings, except the same be specially mentioned and valued in the policy.

II.—Every insurance attended with particular circumstances of risk, arising from the situation, contiguity to other buildings, or construction of the premises, or the nature of the trade carried on, or goods therein, is to be specially mentioned in the order for the policy, so that the risk may be fairly understood; if not so expressed, or if any misrepresentation be given so that the insurance be effected upon a lower premium than would have been charged had such risk been so fairly stated, or if buildings or goods be incorrectly described in the policy, or if, after an insurance shall have been effected, there shall be any erection or alteration or extension of the premises so as to increase the risk, or any erection or alteration of any apparatus for producing heat as aforesaid, or if any hazardous operation or trade shall be carried on, or any hazardous goods be deposited, or any hazardous communication be made, the insured will not be entitled to any benefit under the policy.

III.—No insurance proposed to this Company is to be considered in force until the premium be actually paid. No receipts are to be taken for any premium of insurance but such as are printed and issued from the office by the Company's agents.

IV.—That houses, buildings, and goods in trust or on commission, intended to be insured, must be so described and declared at the time of effecting such insurance, otherwise the policy will not extend to cover such property.

V.—The Company will not be answerable for any loss where fires are used in buildings unprovided with good and substantial brick or stone chimneys, or in consequence of stoves or stove pipes, placed and used contrary to law, or in consequence of the infringement of any law in force for the suppression or prevention of fires, or where stove pipes are carried through the exterior walls or roofs of any house or building; or for any loss by fire on any building under construction or repair, or movables therein, wherein carpenters and joiners are employed, unless the special consent of the Company be first obtained and indorsed on the policy.

VI.—Losses by lightning will be made good by this Company, as far as where either the buildings or the effects assured have been actually set on fire thereby, and burnt in consequence thereof. No allowance will be made for any hay, corn, agricultural produce, or other property which may be destroyed or damaged by its own natural heating; nor for any goods which may be destroyed or damaged while undergoing any process, in or by which the application of fire-heat is necessary; neither will the Company be responsible for loss or damage by explosion, except for such loss or damage as shall arise from explosion by gas. The Company will not be responsible for any loss or damage that may arise from the burning of forests or the clearing of lands; nor will it be answerable for any loss or damage by fire occasioned by any invasion, foreign enemy, insurrection, civil commotion, riot, or any military or usurped power whatsoever, or which shall happen or arise after war shall have been declared against the country wherein the insured property is situate, or during the administration of martial law; nor for any loss or damage by fire occasioned by earthquakes or hurricanes; and this policy shall remain suspended, and be of no effect in respect to any loss or damage which shall happen or arise during the existence of any of the said contingencies, unless satisfactory proof be given that such loss or damage was not occasioned thereby or connected therewith.

VII.—If property insured by this policy should pass, by death, assignment, or otherwise, into new hands, the interest in the policy may be preserved to the successor, provided such succession be allowed at the office, by indorsement on the policy; and if goods insured be removed to a new situation, such removal must be also allowed by indorsement on the policy and a suitable premium paid, if the risk be increased by such removal; but in all cases where such indorsement is not sanctioned and regularly made the policy shall be void.

VIII.—The insured shall, if required, give notice of any other insurance already made, or that shall afterwards be made elsewhere, affecting property insured by this policy; that a memorandum of such other insurance may be indorsed on this policy, otherwise this policy will be void; provided, however, that on such notice being given at any time after the issue of the policy, it shall be optional with the Company to cancel the policy, return-

ing the premium for the unexpired term thereof, if they shall then so deem fit. In the event of insurances with other companies being in force at the time of any loss or damage by fire happening to the property insured by this policy, then this Company will only be liable to the payment of a ratable proportion of any loss or damage which may be sustained; and in case of the assured holding any other policy on the same property as that insured by this policy, and such policy subject to the conditions of average, then this policy is declared to be subject to the conditions of average in like manner.

IX.—That books of accounts, written securities, money, stamps, deeds, bills, bonds, bank-notes, and gunpowder, or other explosive powder, will not be insured or comprehended in any insurance effected by or with this Company; nor will any loss or damage, in any cases of any description, be made good, when more than ten pounds of gunpowder shall be deposited or kept on the premises, nor where any camphene, naphtha, spirits of turpentine, earth oils, crude or refined petroleum, or other explosive liquid, or spirit gas, are deposited or kept on the premises, unless the same shall be specially allowed in the body of the policy.

X.—Metals, coins, sculpture, curiosities, jewels, watches, trinkets, pictures, prints, drawings, manuscripts, missals, curious or rare books, musical, mathematical and philosophical instruments, china, glass, and looking-glasses, earthenware, fixtures, or utensils, are not included in any insurance, unless they are specified in the policy.

XI.—Persons insured by this Company, sustaining any loss or damage by fire, are forthwith to give notice thereof at the office of the Company, or to the agent of the Company through whom the policy was effected, and within fourteen days deliver in writing as particular an account of their loss or damage as the nature of the case will admit of; such account of loss to have reference to the value of the property destroyed or damaged, immediately before such fire, and shall verify the same by the production of their books of accounts, and by affidavit or a statutory declaration of the claimants, together with the testimony of their domestics, their servants, or other persons in their employ, and such vouchers and other evidence as in the judgment of the directors, or any of them, or the agents through whom the policy was effected, may tend to prove such account and value, and shall produce such further evidence, and give such explanations as the directors, or any of them, or such agents as aforesaid, may reasonably require; and until such accounts, declaration, testimony, vouchers, and evidence are produced, and such explanations given, the loss shall not be payable; and if there shall appear any fraud or any false statement in such account of loss or damage, or in any of such books of account, or in any such testimony, vouchers, evidence, or explanations, or if such affidavit or statutory declaration shall contain any untrue statement, or if it shall appear that the fire shall have happened by the procurement or wilful act, or by the means or connivance of the party or parties insured, or of the claimants, then such parties and all persons claiming under them, or either of them, shall be excluded from all benefit from the insurance, and the policy shall be absolutely void. And if no claim shall be made for the space of three months

after the occurrence of any fire, the insured shall forfeit every right to restitution or payment by virtue of this policy, and time shall be of the essence of the contract. No profit of any kind is to be included in any claim to be made under the policy.

XII.—The assured shall not be permitted to abandon any movable property insured, which shall be injured in consequence of fire, without the express consent of the Company or its agent. In case of the removal of property to escape conflagration, the Company will contribute ratably with the insured and other companies interested to the expenses of salvage and the damage the property may sustain by such removal; but the Company will not hold itself liable for any loss or damage upon property removed from any building (not actually on fire), contrary to the declared desire of the officer or agent of the said Company, or not ordered or sanctioned by such officer or agent, when present, and in a situation to be consulted by the assured.

XIII.—That in every case of loss or damage by fire for which the said Company shall be liable, the same, on being duly proved, shall either be paid immediately, or the said Company shall have the option, with all convenient speed, to rebuild or repair, or reinstate, or replace the property insured, and in the case of buildings to put them into as good and substantial a condition as they were in at the time when such fire happened.

XIV.—If any difference shall arise with respect to any claim for loss or damage by fire, and no fraud suspected, and the Company does not elect to rebuild, repair, reinstate, or replace the same, such difference shall be submitted to arbitrators, indifferently chosen, whose award, or that of their umpire, shall be conclusive.

XV.—It is furthermore hereby expressly provided, that no suit or action of any kind against the said Company, for the recovery of any claim upon, under, or by virtue of this policy, shall be sustainable in any court of law or equity, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any suit or action shall be commenced against the said Company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

XVI.—The agents of the Company shall in no case be made personally responsible on account of any legal or other investigation which they may find it necessary to institute for the satisfaction of the Company; nor can their personal property be attached on account of any alleged loss by the assured. If the assured should commence such proceedings against the agents, it is hereby declared and stipulated that the said assured shall forfeit thereby all claim upon the Company, for loss or damage sustained, and shall, moreover, be responsible for all expenses which shall accrue in consequence of his proceedings.

XVII.—That if from increase of hazard by alteration of, or increase to buildings, or from the introduction of hazardous goods or property, or from any cause whatever, the Company is desirous of discontinuing the risk, the

Company shall have the option of canceling the policy on due notice being given in writing, and at the same time returning the premium for the unexpired term.

To these conditions are added the *first three* clauses of the English Average Policy. (379.)

## REMARKS.

**402.** It would seem to be much the easier task to tell what was not insured under these conditions than to know what was covered by the policy. The "canny Scotsman" is apparent throughout in the manner in which the interests of the company are guarded, to secure which we find in the body of the policy a provision making the acceptance of the policy by the insured a "*special assent*" to the terms of the policy.

**403.** Among the *conditions*, the stipulations and requirements are exceedingly stringent, such as requiring notice of all adjoining hazards; only the printed form of receipts of the office will be recognized in the payment of premiums. Burning of forest, or clearing lands, during martial law after war is declared, earthquakes and hurricanes, suspend the policy while in existence.

When other insurance is reported, the company may cancel and return *pro rata* premium, if consent is withheld.

Notice of loss must be given *forthwith*, and proofs of loss within fourteen days, though no penalty, beyond that of the loss not being payable until presented, is provided for. If no claim be made within three months, the insured forfeits all right to indemnity, and "time shall be the essence of the contract." Testimony of "domestics, servants, and employees" required.

When property is removed from a building not on fire, contrary to the advice of an officer or agent of the company, the liability of the company shall cease.

Agents of the company shall be exempt from responsibility on account of any legal investigations of causes of loss. Any proceedings against them, for this cause, forfeits the claim upon the company.

The company may cancel the policy for any cause ; but nothing is said of such right upon the part of the assured.

Nothing whatever is said in the matter of renewals.

No hour of commencement or termination of the insurance is named.

**404.** The remaining requirements of the condition are common to most other policies, but they are drawn up with a minuteness of detail that would frighten timid people. It is just such policies and conditions as these that tend to lower the standard of fire underwriting, as giving the would-be insurer just cause to fear that, from some unwitting infraction of the endless stipulations of the contract, he would be in great danger of losing his indemnity in case of loss under a policy of this company.

**405.** In addition to the other stipulations, the usual conditions of average of the English policies are added, making the policy a "floater" when covering in several places, and subject to average at all times.

#### COLONIAL POLICIES.

THE NEW ZEALAND INSURANCE COMPANY

*For Fire, Marine, and General Purposes.*

AUCKLAND.

*Established A. D. 1859.*

No. —.

Sum insured, £ —.

Premium £ —.

**406.** WHEREAS, — ha— paid to the "NEW ZEALAND INSURANCE COMPANY" the sum of —, being the Premium on the Sum insured by this policy from the — day of — One Thousand Eight Hundred and —, to the — day of — One Thousand Eight Hundred and —, at four o'clock in the evening of that day for the Insurance against Loss or Damage by Fire of the property hereinafter described, to the amount hereinafter mentioned,

*(Description of the Property :)*

N.B.—It is hereby declared that if the assured hold any policy, subject to average, on property covered by this Insurance, this policy shall, in like manner, be subject to average.

NOW, BE IT KNOWN that, from the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_, until the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, and for so long afterwards as the assured, \_\_\_\_\_ heirs, executors, or administrators shall, from time to time pay, or cause to be paid, the sums required for the renewal of this policy, and the directors of the said Company shall agree thereto by accepting the same; the Funds and Property of the said Company shall be subject and liable to pay, reinstate, or make good to the said assured, \_\_\_\_\_ Heirs, Executors, or Administrators, such Loss or Damage as shall be occasioned by Fire to the Property above-mentioned and hereby Insured, not exceeding in each case respectively the Sum or Sums hereinbefore severally specified and stated against each Property.

PROVIDED ALWAYS, That this Insurance shall at all times, and under all circumstances, be subject to the Conditions and Stipulations printed on the back hereof, which Conditions and Stipulations constitute the basis of this Insurance, and are to be considered as incorporated in, and forming a part of this Policy.

IN WITNESS WHEREOF, the Common Seal of the "New Zealand Insurance Company" has been hereunto affixed at AUCKLAND, in the Colony of New Zealand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord One Thousand Eight Hundred and \_\_\_\_\_

\_\_\_\_\_  
Manager.



**407. CONDITIONS AND STIPULATIONS REFERRED TO IN THIS POLICY.**

I. That upon the Insurance of any property, whether buildings, or goods deposited therein, the applicant shall state his name, residence, occupation, and the nature of his interest, and specify of what materials the Walls and Roofs of such Buildings are respectively constructed, where situated, and by whom occupied, and whether as private dwellings, or how otherwise, whether any Manufacture or Hazardous Trade be carried on, or any Hazardous Articles be deposited or kept therein, and, if so, shall describe the nature and quantities thereof; whether any Steam Engine, Furnace, Kiln, Stove,

Coakel, or other Apparatus whereby heat is produced (common grates and stoves in substantial stone or brick fireplaces in private dwellings excepted) be erected on the Premises, and, if so, shall specify particularly the nature and construction thereof respectively, together with the construction and occupation of contiguous or immediately adjacent buildings; and if such specification do not truly and circumstantially describe the Property and the several particulars regarding the same, as aforesaid, so that the nature and degree of the Risk may be justly estimated, the Policy or Insurance thereon shall be null and void. The Insurance on any Buildings shall not be held to include anything outside thereof, such as Clap Boarding, Fences, Blinds, Galleries, Porches, *appentis*, Sheds, or other Buildings, except the same be specially mentioned and valued in the Policy; no Furniture usually denominated Fixtures, Machinery, or other *legal or constructed immoveables*, contained in any Building, shall be held to be Insured, as appertaining or belonging thereto, except such fixtures as shall be specially named in the body of the Policy.

II. That in case any alteration or addition shall have been made in or to any Risk on which such Insurance has been effected, whether such alteration or addition do consist in the erection on the Premises of Apparatus for producing Heat, or in the introduction of Articles more hazardous than may be allowed in the Policy, or in the change of the nature of the Occupation, or in any other manner whatsoever, by which the degree of risk is increased, and a consequent additional Premium would be required, and whether such Insurance has been effected on the Building itself, or on Goods, Wares, or Merchandise deposited therein, and the Insured shall not have given due notice thereof respectively to the said Company, or its Manager or Agent, in writing, and unless such alteration or addition shall have been allowed by endorsement on this Policy, and such increased Premium shall have been paid as may be required, such Policy or Insurance shall be null and void.

III. That Houses, Buildings, and Goods, held in Trust or on Commission, shall be insured as such, otherwise the Policy will not extend to cover them.

IV. No Insurance proposed to this Company shall be in force until the Premium be actually paid; and persons desirous of continuing Insurances must make their respective payments of the Premium thereon, on or before the days on which they respectively become due, otherwise such Insurances will expire; and the only evidence of such payments shall be the Printed Receipts issued from the Office, and signed by the Manager or one of the Clerks or Agents of the Company.

V. No Loss or Damage by fire, occasioned by Invasion, Foreign Enemy, Riot, Civil Commotion, Military or Usurped Power whatever, Earthquake, or Hurricane, or Spontaneous Combustion, will be made good. Neither will this Company be answerable for Loss or Damage to Stock or Goods of any kind, which shall or may happen to the same while undergoing any process in or by which the application of Fire-Heat is necessary; and the Policy shall remain suspended, and be of no effect in respect to any Loss or Damage which shall happen or arise during the period of any of the foregoing con-

tingencies. Losses by Lightning will be made good when either the Buildings or the Effects Assured have been actually set on Fire thereby, and burnt in consequence thereof.

VI. That all Insurances on Farming Stock (which comprehends all sorts of corn and grain, hay and straw, in barns or stacks, farming utensils, and live stock) shall be effected under such general description; but this Company will not be answerable for any Loss or Damage happening thereto, occasioned by the Natural Heating of any of the articles or commodities so comprehended and included in such Insurance; but the Loss on any Property in consequence (except that by which its Natural Heating has been the cause of the Fire) will be made good.

VII. That Books of Accounts, Written Securities, Money, Bank-Notes, Plate-Glass Windows, and Gunpowder, will not be Insured or comprehended in any Insurance effected by or with this Company; nor will any Loss or Damage, in any case, or of any description, be made good, when more than ten pounds of gunpowder shall be deposited or kept on the premises, unless the same shall be specially allowed on the Policy.

VIII. China, Glass, Looking-Glasses, Jewels, Watches, Trinkets, Medals, and other Curiosities, Prints (not in Trade), Paintings, Drawings, and Sculptures, are not included in this Insurance, unless they are specified in the Policy, excepting when insured by Special Agreement under the term "*Personal Property of every Description.*" In cases of Loss, not more than £10 will be allowed on any one Picture or Print, unless a valued Catalogue shall have been previously deposited in the Office.

IX. No claim shall be recognized or recoverable if the Property insured be previously or subsequently insured elsewhere, unless the particulars of such other Insurance be notified to the Company in writing, and allowed by endorsement hereon; provided on such notice being given, after the issue of the Policy, it shall be optional with the Company to cancel the same, returning the ratable Premium for the unexpired term thereof; and in no case where any Property insured by this Policy is insured elsewhere, shall this Company be liable to pay more than their ratable proportion of Loss or Damage.

X. Upon the Death of the Assured, or the assignment of any interest assured in this Company, the Policy and Interest therein may be continued to the Heir, Executor, or Administrator respectively; or be transferred to the Person who shall, upon such Death, or by such assignment, be entitled to the Property Insured, provided that such Heir, Executor, or Administrator, or other Person so entitled, procure his or her interest therein to be endorsed on the Policy by the Manager or authorized Agent of the Company.

XI. That the Insured sustaining any Loss or Damage by Fire shall forthwith give notice in writing to the Directors or Manager, or to the nearest Agent of the Company, and shall, within fifteen days after such Fire shall have happened, deliver to the said Directors, their Manager, or Agent, as accurate and particular account in detail of their Loss or Damage respectively, as the nature and circumstances of the case will admit, and shall

verify the same by solemn declaration or affirmation, before a Justice of the Peace, and shall produce his books of account, vouchers, and such other evidence as the Directors may reasonably require; and until such declaration or affirmation, account, and evidence, are produced, the amount of such Loss, or any part thereof, shall not be payable or recoverable. No profit of any kind is to be included in such claim; and if there appear to be any fraud, overcharge, imposition, or any misrepresentation; or if the Fire shall have happened by the procurement or wilful act, means, or connivance of the Insured or Claimants, they shall be excluded from all benefit under this Policy.

XII. That in every case of Loss or Damage for which the said Company shall be liable, the same, on being duly proved, and the accounts adjusted, shall either be paid immediately, at the Office of the Company, or the said Company shall have the option, where the Insurance may be on Goods, to supply the Insured with the like quantity of Goods, of the same sort or kind, and of equal value and goodness with those destroyed or damaged by fire; or where the Insurance may be on Houses and Buildings, the said Company shall have the option, with all convenient speed, to rebuild or repair, and reinstate the same, and put them into as good and substantial a condition as they were in at the time when such Fire happened. The assured shall not be permitted to abandon any moveable Property Insured, which shall be injured in consequence of Fire, without consent of the Company. This Company shall not be answerable for the Rent of Premises Destroyed or Damaged by Fire, unless the same shall be specially agreed upon and inserted in the Policy.

XIII. That if in any case the Company shall be unable to reinstate or repair the Buildings because of any provisions in the Acts in force for regulating the Alignment of Streets, or the erection of Buildings, the Company shall, in every such case, only be liable to pay such sum as would be requisite to reinstate or repair such Buildings if the same could lawfully be reinstated to their former condition.

XIV. In case of the Removal of Property, to escape conflagration, the Company will contribute ratably with the Insured and other Companies interested, to the expenses of Salvage and the Damage the Property may sustain by such removal; but the Company will not hold itself liable for any Loss or Damage upon Property removed from any Building contrary to the declared desire of a Director, Officer, or Agent of the said Company or not ordered or sanctioned by such Director, Officer, or Agent.

XV. If any difference shall arise between this Company and the Insured, with respect to any claim for Loss or Damage by Fire, and no Fraud be suspected, such difference shall be submitted to the determination of Arbiters, mutually chosen, whose award in writing, or that of an Umpire previously appointed by them, shall be conclusive and binding on both parties. But in no case shall this Company be obliged to undertake the risk of the Sale of Damaged Goods. The Arbiters or Valuers shall fix the value as it stood immediately before, and the value immediately after the Fire; and the Company shall make good, or pay, the difference between these two

sums, either by repairs and restitution, or by payment in cash, at their own option.

XVI. The Company will not be answerable for any Loss where Fires are used in Buildings unprovided with good and substantial Brick or Stone Chimneys, or in consequence of Stoves or Stove Pipes placed and used contrary to law, or in consequence of the infringement of any law in force for the suppression or prevention of Fires, or where Stove Pipes are carried through the exterior walls or roofs of any House or Building; or for any Loss by Fire in any Building under construction or repair; or movables therein, wherein Carpenters and Joiners are employed, unless the special consent of the Company be first obtained and endorsed on the Policy.

XVII. It is furthermore hereby expressly provided, that no suit or action of any kind against the said Company, for the recovery of any claim upon, under, or by virtue of this Policy, shall be sustainable in any Court of Law or Equity, unless such suit or action shall be commenced within the term of six months next after any Loss or Damage shall occur; and in case any such suit or action shall be commenced against the said Company after the expiration of six months next after such Loss or Damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

#### REMARKS UPON THE POLICY.

408. This is evidently a "mutual company," the seal being used as evidence of consideration, the future premiums being unpaid. The company is for "fire, marine, and *general purposes*," but what may be embraced in "general purposes" the policy fails to designate; but, from the clue afforded by the word "*immovables*," near the close of the first section of the conditions, it may signify that property, both *movable* and *immovable*, will be covered by their policies, as in the French companies having the term *generale* applied to them (69), or it may be intended to include banking privileges.

409. The structure of the conditions is very similar to that of the ——— Company (401), though lacking that minuteness of detail peculiar to this last-named policy. The following peculiarities are noticeable:—

*Application.*—The description of the property must be exact and particular, including exposures, occupation, etc., etc. The insurance is held not to include anything outside of the building, as clap-boards, blinds, galleries, porches, and such like, unless specifically named and *valued*. So also with

fixtures, machinery, and other *legal or constructed immovables*, which must be specifically named.

*Premiums.*—The printed receipts of the office will be the only evidence of the payment of the premium.

*Exceptional hazards.*—Among others, earthquakes, hurricanes, and spontaneous combustion are excepted. So also damages from the natural heating of articles themselves, or *other articles to which such natural heating may communicate fire*, are excepted. This latter exception is contrary to legal ruling heretofore. (1667.)

*Memorandum articles*, under the name or designation of "personal property of every description," must be specifically insured.

*Other insurance* must be noted for consent, and company may cancel pro rata. In case of loss with co-insurers the company pays its *ratable proportion*.

*Notice of loss* must be given forthwith, and proofs, and vouchers furnished in *fifteen* days. No forfeiture in case of failure so to do; loss not payable until the proofs and vouchers are furnished.

*Reinstatement*, as customary, with the very proper addition that "where, in consequence of municipal restrictions, buildings cannot be reinstated, the company shall only be liable for the amount that would have been required to reinstate the building, had it been lawful so to do." There are rulings in this country to the contrary of this stipulation, but no such condition was in the policy. (1847.)

*Removal* of property from a building not on fire, contrary to the advice of an officer or agent of the company, relieves the company from liability on such property.

*Appraisement* provided for, but "in no case will the company be obliged to undertake the sale of damaged goods." This is simply equivalent to no "abandonment."

*Builders' risks*, while repairing, not covered unless specifically agreed for.

*Limitation of actions*, six months.

*Duration of risk.*—Hour of termination, *four o'clock P. M.*; no hour of commencement named.

*Average.*—In case of any co-insuring policy being subject to average, the policy of this company shall also be so subject.

PACIFIC FIRE AND MARINE INSURANCE CO.

OF SIDNEY.

*Incorporated by Act of Parliament of N. S. Wales.*

Premium,	26 Victoria,	Amount insured,
£ ———.	Fire Department.	£ ———.

**410.** THIS POLICY OF INSURANCE WITNESSETH, that \_\_\_\_\_ having paid to the PACIFIC FIRE AND MARINE INSURANCE COMPANY the sum of \_\_\_\_\_ for the Insurance against Loss or Damage by Fire of the property hereinafter described, to the amount hereinafter mentioned, not exceeding upon any one subject the sum specified thereon, namely:—

*(Describe the property.)*

THE PACIFIC FIRE AND MARINE INSURANCE COMPANY do hereby agree, that from and including the \_\_\_\_\_ day of \_\_\_\_\_, until four o'clock in the afternoon of the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord One Thousand Eight Hundred and \_\_\_\_\_, and for so long afterwards as the said Assured, his or their Heirs, Executors, or Administrators, shall from time to time pay, or cause to be paid, the sum required for the renewal of this policy, and the said Company shall agree thereto by accepting the same; the said Company shall, subject to the conditions and stipulations endorsed hereon, which constitute the basis of this Insurance, be subject and liable to pay, reinstate, or make good to the said Assured, his or their Heirs, Executors, or Administrators, such loss or damage as shall be occasioned by Fire to the Property above mentioned and hereby insured, not exceeding in each case respectively the sum or sums hereinbefore severally specified and stated against each property. **Provided always,** and it is hereby declared and agreed, that this Company shall not be liable to make good any Losses or Damage by Fire which shall happen or arise by any foreign or other invasion, or enemy, or by any Insurrection, Riot, or Civil Commotion, or Military or Usurped Power, or by any Explosion, Earthquake,

Volcano, or Hurricane, or by Lightning, unless the property insured shall be actually set on fire thereby; and the Policy shall remain suspended and be of no effect so far as concerns any loss or damage which shall happen or arise during the period of any of these contingencies.

Any condition, alteration, or memorandum endorsed by the Company on this Policy, or inserted by them on the margin thereof, shall have equal force and effect as if the same were inserted in the body of the document.

*In witness whereof*, we, the undersigned, as the true and lawful Agents and Attorneys of the said Company, and in their name and behalf, have subscribed these presents this \_\_\_\_\_ day of \_\_\_\_\_, One Thousand Eight Hundred and \_\_\_\_\_, Agent.

#### 411. THE CONDITIONS AND STIPULATIONS REFERRED TO IN THIS POLICY.

I. Upon the Application for Insurance of any property, whether of Buildings or of Goods deposited therein, the Applicant shall state his name, address and occupation, the nature of his Interest in and the particulars of the risk; for example, as to Buildings—the situation, construction, and occupation thereof; the nature of the business, if any, carried on, the description of the Articles deposited in, and the implements or apparatus of fire heat contained therein—common Grates and Stoves in substantial Stone or Brick fireplaces in private dwelling houses excepted; together with the construction and occupation of contiguous or immediately adjacent buildings; and as to Goods—the nature thereof, together with similar particulars respecting the buildings containing them, and of adjacent or contiguous premises as above specified; and whether as to Buildings or Goods—all other facts requisite to enable the Company to estimate the risk. And on any change or alteration taking place in the risk as to the above-mentioned particulars, or any of them, during the continuance of this Policy, the liability of the Company shall be thereby terminated, until the Insured shall notify the same to the Manager in Sydney, or the Agent of the Company where the Insurance was effected, as the case may be, and obtain an endorsement on this Policy, duly signed by the Manager or Agent aforesaid, and shall pay such increased premium, if any, as may be required; and in case of error in, or misrepresentation or suppression of any of the above particulars, whether on the original proposal for, or during the continuance of this Policy as aforesaid, the same shall be thereby rendered void. Goods held in Trust or on Commission must be expressly stated to be so held, or they will not be covered under the Policy.

II. This policy shall not be in force until the premium for the same shall be paid. All renewal premiums shall be paid on or before the days on which they shall become due, otherwise this policy will expire; and the only evidence of the payment of such renewal premiums, if the Company shall see fit to renew the Policy, shall be the printed receipts issued from the office of, and signed by one of the authorized Officers or Agents of the Company.

III. Neither Books of Account, Manuscripts, Deeds, Bonds, Bills, Notes, Mortgages, or other written securities, nor Money, can be comprehended in this policy, on any terms; and the Company will not be responsible for any loss, where more than such weight of Gunpowder as may be permitted by any Parliamentary or Municipal Act shall be deposited or kept on the premises.

IV. No Machinery, Fixtures, Watches, Trinkets, Plate, Jewels, Precious Stones, Ornaments, Musical Instruments, Pictures, Prints, Drawings, Medals, or other articles of bijouterie or vertu, shall be included in this Policy, unless specified therein, and where so specified no more than £25 shall be recovered on any one article unless separately insured.

V. No claim shall be recognized in respect of this Policy, if the property assured therein be previously, or shall during the continuance of the Policy become Insured elsewhere, unless the particulars of such other Insurance be notified to the Company in writing, and allowed by endorsement hereon; provided, however, that on such notice being given at any time after the issue of the Policy, it shall be optional with the Company to cancel the same, returning the rateable premium for the unexpired term thereof; and in case of the Assured holding any other Policy on property in the same building, subject to average, then this policy is declared subject to average in like manner. It is further understood that in no case where the same property shall be insured in any other office, shall this Company be liable to pay more than their rateable proportion of such loss or damage as may be sustained; and the payment of any premium for any such Insurance shall be held to be conclusive evidence that the same has been effected within the meaning of this clause.

VI. The policy ceases to be in force so far as concerns any property hereby insured, which shall pass from the Insured to any other person otherwise than by Will or operation of law, unless notice thereof be given to the Company, and the subsistence of the Insurance in favor of such other person be declared by a memorandum endorsed hereon, by or on behalf of the Company, if they shall see fit so to do; and in the event of the removal to other premises, of any goods or effects Insured by this Policy, the latter shall thereupon expire, unless such removal be similarly allowed by endorsement.

VII. The Assured by this Policy, sustaining any loss or damage by fire, shall forthwith give notice to the Manager of the Company, at the Head Office in Sydney, or to the recognized Agent thereof, at or near the locality in which such loss or damage shall have occurred, and shall, within fifteen days after such fire shall have happened, deliver to such Manager or Agent as accurate and particular an account of such loss or damage as the nature and circumstances of the case will admit, and shall verify the same by solemn declaration or affirmation before a Justice of the Peace, and produce his or their books of account, vouchers, and such other evidence as the Directors may reasonably require; and unless such account, verified as aforesaid, shall be delivered within the time aforesaid, and unless such other evidence, if required, shall be produced in manner aforesaid, neither

the whole nor any part of such loss shall be payable or recoverable. No profit of any sort is to be included in the claim, and if there appear to be any fraud, overcharge, or imposition, or any false declaration, or if the fire shall have happened by the procurement or wilful act, means, or connivance of the Insured, or claimants, no benefit shall be recoverable under this Policy.

VIII. In case of loss, either as to Buildings or Goods, it shall be optional with the Company, either to pay the amount thereof when duly ascertained, or with all convenient speed to make good such loss by reinstatement; and in the event of such reinstatement being prevented by any Building Act, or Act for regulating the Alignment of Streets, or otherwise, the Company shall only be liable for such an amount as would, but for such Act or Acts, be sufficient to procure such reinstatement.

IX. In case of the removal of property to escape conflagration, the Company will contribute rateably with the Assured and other Companies interested, to the expenses of Salvage, and such damage as the property may sustain by such removal; but the Company will not be responsible for any loss or damage to property removed from any Building (not actually on fire) contrary to the declared desire of any of their Officers or Agents, or not sanctioned by any such Officer or Agent when present, and in a situation to be consulted by the Assured.

X. The Agents of the Company shall in no case be made personally responsible on account of any legal or other investigation which they may find it necessary to institute, for the satisfaction of the Company, nor shall their personal property be attached on account of any alleged loss by the Assured. And in case any proceeding shall be commenced against the Agent by the Assured, no benefit shall be recoverable by him under this Policy, and he shall moreover be responsible for all expenses incurred in consequence of such proceedings.

XI. If any difference shall arise with respect to any claim under this Policy, and no fraud be suspected, such difference shall be referred to the decision of two indifferent Arbitrators, one to be chosen by either side; and such Arbitrators shall, before proceeding on any reference, choose an Umpire to be called in in case of difference, and the award in writing of such two Arbitrators, or in case of such difference, of their Umpire, shall be final and conclusive upon the Company and the Assured.

#### REMARKS UPON THE POLICY.

**412.** This is evidently an *agency* form of policy, as it is to be valid when signed by the lawful attorney only, no official name or names appearing to authenticate it.

The day, but not the hour of commencement of the risk, is given; the hour of termination is *four o'clock P. M.*

*Exceptional risks* are explosions, earthquakes, volcanoes, and hurricanes, the policy being suspended so long as these contingencies may be operative.

*Application* in effect the same as the New Zealand Company; a trifle less minute and exacting.

*Premium.* The printed form of receipt of the company, only recognized as evidence of payment of premium.

*Other insurance* must be noted; when it contains the average clause, the policy of this company is also made subject to average. In case of loss, company pays its ratable proportion. Company may cancel if consent for other insurance be refused.

*Alienation*, otherwise than by *will* or *action of law*, voids the policy, unless consent is given in writing.

*Notice of loss* must be immediate. Proofs of loss must be sent in within fifteen days, with necessary vouchers. Claim not recoverable "if not produced *as aforesaid*."

*Reinstatement* same as New Zealand policy.

*Agent* not responsible for legal investigation for losses; where proceedings may be commenced against agent for such cause, claim shall not be recoverable. A precaution against actions for libel where agents and adjusters may have occasion to question the honesty of a loss.

*Cancellation.* No provision for cancellation at option of either party, except as above in case of other insurance.

#### THE ENGLISH AVERAGE POLICY.

**413.** To prevent the evasion of the Stamp Law of Great Britain, the Act 9 Geo. IV., chap. 13, was passed, enacting that—

"When two or more buildings were so separated as to form a plurality of risks, they shall be separately valued and separately insured; and no insurance shall be lawful in one gross sum upon two or more separate subjects of risk, except with the insertion of a clause or condition of average."

Insurances of this kind are called "*average policies*" or "*floating policies*" indiscriminately.

The form is as follows, embracing three clauses, viz. :—

## CONDITIONS OF AVERAGE.

**414. I.**—It is hereby declared and agreed, that whenever a sum insured is declared to be subject to the Conditions of Average, if the property so covered shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon, then this Company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property, at the time when such fire shall first happen.

**415. II.**—But it is at the same time declared and agreed that if any property included in such Average shall, at the breaking out of any fire, be insured by any other policy which, whether subject to Average or not, shall apply to part only of the buildings or places, or of the property to which such Average extends, then this policy shall not cover the same, excepting only as regards any excess of value beyond the amount of such more specific Insurance, which said excess is declared to be under the protection of this Policy, and subject to average as aforesaid.

**416. III.**—And it is further declared and agreed, that if the Assured shall claim under this Policy for loss or damage to property embraced in the terms of any Average Policy, extending as well to other buildings or places, or to other property not included in the terms of this Insurance, and if at the breaking out of any fire there shall not be any property in such other buildings or places, or any such other property actually at risk to be protected by such Policy, then, so far as regards the settlement of any Claim under this Policy, the terms and liability thereof shall be held to be concurrent, in all respects, with those of such other Policy.

**417.** The following clause has been added to these "average conditions," but it usually appears as a separate condition, and is to be found in specified as well as average policies, both in England and in America:—

IV.—"In case of the assured holding from this or any other Company any policy subject to average on the property covered by this insurance, then this policy shall be subject to average in like manner."

**418.** In reference to this fourth clause Mr. Bunyon says —

"The justice of this last clause is very doubtful, as it may be contended that the diligence of another set of insurers ought not to import a fresh term into a prior contract to the prejudice of the insured." He then illustrates by example how the insured must be a loser when he should not be

**419.** The late Mr. Hore in his "Apportionment of Fire Losses," also says of it:

"I confess to a feeling of doubt as to the legality of the condition above referred to, because it may operate to the prejudice of the claimant, and make him a loser at times when it is clearly inequitable that he should be a loser."

**420.** The *first* of these clauses is the simple co-insurance stipulation (**366**), by which the insured bears a share of the loss over in the proportion that the excess of value of the property bears to the total amount of (average) insurance thereon.

**421.** The *second* clause is the English rule requiring specified policies to be first exhausted in the payment of loss, before the average policies can be called upon to contribute. It was to meet this inequitable practice that clause *four* above cited, was introduced.

**422.** The *third* clause was introduced to meet a difficulty in the adjustment of losses under the average clause, where exemption was claimed on account of a "greater range" (**22**), though in some of the places named there was no property at risk. Under the operation of this *third* clause no such claim would be allowed.

**423.** The object of this clause, and the evil it was intended to circumvent, can be well understood from the following excerpt from an article in the *London Assurance Magazine*, by Mr. Christie, then of the Sun Fire Office; he says :—

"If it were possible to rescind the late resolutions (**416**), and a heavy fire were to occur, we should have the old question of ranges revived—which is the greater, and which the less? The late Mr. Richter made a happy hit when he hinted that if the offices were to go a-tilt in this manner, and embrace what was not intended, simply to exhibit greater range without the risk of it, he would quietly include a church!—a device which few would think of in common with the worldly affairs of insurance, until the loss, and the degree of immunity from liability which the wording conferred, revealed it to their wondering eyes. Thus a way would be again opened up to an unscrupulous office, to set at naught the morality, so to speak, of insurance practice." (**2173**.)

#### CONTINENTAL FIRE POLICIES.

**424.** In their general scope and character the fire policies in use by the Continental nations do not vary materially from the customary forms, though they present some peculiarities not found in the English or American contract, particularly as to a more definite declaration of the rights of the company. The printed conditions of insurance precede the written body of the policy, and in France the insured must sign his name to the conditions before the contract is completed. (**110**.)

The policy usually runs for *ten years*, with the premiums payable annually. And the conditions of the contract are drawn with a special view to the collection of the premiums by the companies. They will amply repay a careful study.

**425.** Herewith are presented forms of Continental policies as follows, viz. :—

1ST. FRENCH.

2ND. GERMAN.

3RD. HAMBURG.

For which we are indebted to the *Committee on Forms of Policy* of the NATIONAL BOARD OF FIRE UNDERWRITERS, under whose auspices they were translated.

In the *German* and *Hamburg* forms will be found a visible improvement upon the Amsterdam form of A. D. 1744.

**426.**

## THE FRENCH POLICY.

## THE UNION

FIRE INSURANCE COMPANY.

*Chartered 5th October, 1828.*

.....  
 Revenue  
 Stamp  
 .....

No. 35,025.  
 ———  
 AMOUNT INSURED,  
 Fr. 48,000.  
 ———  
 PREMIUM,  
 Fr. 37.60.

CITY OF PARIS  
 ———  
 INSURANCE  
 ———  
 POLICY.

MR. RITTER.  
 ———  
 TERM,  
 TEN YEARS,  
 From 13 Feb., 1867,  
 To 13 Feb., 1867.

## GENERAL CONDITIONS.

ART. 1. The Company insures the personal and real property described in the present Policy against damage by Fire, even if the fire should be caused by lightning. The Company insures, moreover, in case of fire, the following risks, when the same are stipulated in the Policy, viz. :

*Tenant's Risks*; that is to say, the effects of the responsibility for which the party insured is liable as a tenant, according to Articles 1733 and 1734 of the Code Napoleon.

*Claims of Neighbors*; to wit, the consequences of any action that neighbors may take against the insured on the plea of communicating fire to their property, as provided for by Articles Nos. 1382, 1383 and 1384 of the same Code.

*Claims of Tenants against the Owner*, for damage caused to their furniture and goods, in accordance with the cases provided for by Articles 1386 and 1721 of the same Code.

ART. 2. The Company will not be responsible in case of fire occasioned by war, invasion, riot, military force of any kind, volcanoes and earthquakes.

ART. 3. The Company will not insure storehouses, or magazines or manufactories of gunpowder, deeds of all kinds, precious stones and jewels, gold and silver bullion and coin.

In case of explosion or detonation, even when caused by lightning, the Company will not be responsible for the damage resulting therefrom, but will only guarantee to make good the damage from fire caused thereby.

The Company will not be responsible for articles lost or stolen, nor for laces, cashmeres, jewelry, medals, plate, pictures, statues, and generally all rare or precious articles, whether moveable or fixed, unless the same shall be insured for special and specific sums.

The Company will be responsible for material damage only, and shall not be held to grant any indemnity for change of street line, lack of tenants, or profit, cancellation of leases, inoccupation, cessation of labor, or for any other loss not material. All the above exceptions shall apply equally to the insurance of the risks mentioned in the 3rd, 4th and 5th paragraphs of Art. 1.

ART. 4. The insurance shall in no case result to the profit of the party insured, but shall guarantee to him only indemnity for such actual loss as he may suffer; consequently the party insured shall not be entitled to cite or give as evidence the amount insured, the premiums paid, or the designations and valuations contained in the policy, as an acknowledgment or proof of the existence and value of the articles insured, either at the time of contracting the insurance or in case of fire.

ART. 5. Premiums are payable in advance at the head office of the company in Paris.

No receipt for premiums shall be valid unless mentioned in the policy or taken from the register of renewal receipts with counterparts.

The first year's premium must be paid down upon the policy being signed, from which time the insurance shall take immediate effect, or the premium for the first year shall be paid upon the day that the insurance commences. In all cases the policy shall not be binding until after the payment of the first year's premium.

The simple payment of the premium before the policy is signed shall not bind either the applicant or the company; and they shall only be bound after the policy is signed by both parties.

ART. 6. The premiums for the years subsequent to the first year shall be paid at the latest within fifteen days after the same become due.

In default of the payment of any one premium within fifteen days after due, the force of the insurance shall be suspended without it being necessary to make any demand or legal summons for payment, and the party insured, in case of loss, shall not be entitled to any indemnity.

The insurance shall remain suspended even during the proceedings taken by the company to collect the over-due premium; but the policy shall in all cases become again valid, dating from noon of the day following that on which the payment of the over-due premium, and the costs, if any, shall be made to and accepted by the company. It is understood that the payment of an over-due premium during or after a fire shall not give the party insured any right to indemnity.

The collection of former premiums made by the company at the residence of parties insured shall not be considered as affecting the preceding stipulations.

If the premium is not paid within the period of one year dating from the time when due, the policy shall be considered cancelled at law for the time still to run, without the necessity of giving any notice to that effect. The unpaid premium shall remain due to the company as indemnity.

In case of legal proceedings the policy shall not be considered as legally cancelled until one year after the last act in such process at law.

ART. 7. The party insured must declare and cause to be stated in the policy, *under penalty of forfeiting all right to indemnity in case of fire*, whether the property insured belongs wholly or only partially to him, whether he owns the ground upon which the building insured is situated, whether he is a party deriving profit from the property, or a creditor, tenant or agent, and generally in what capacity he acts.

ART. 8. In the event of the sale or deed of gift of the property insured, the seller or donor shall require the new proprietor to execute the policy, otherwise he shall pay the company, in addition to the premiums due, an indemnity equal to one year's premium.

In case of death, sale or deed of gift, the heirs or new proprietor shall declare their qualifications within one month following the death, sale or deed of gift, and cause such declaration to be mentioned in the policy.

In case of dissolution of co-partnership, suspension of payment or failure, the party insured or his assigns are required to immediately declare such dissolution of co-partnership, suspension or failure, and cause their declaration to be noted on the policy.

ART. 9. The party insured shall be required to notify the company, and cause such notification to be mentioned on the policy, and to pay an additional premium if required, in the following cases, to wit:

Before making changes or additions in buildings insured, or containing property insured, which shall multiply or increase the risk.

Before erecting in such buildings or in contiguous buildings any factory, works or steam engine, or establishing any trade or industry that shall increase the risk from fire.

Before placing in such building provisions, goods, or any articles whatsoever which might add to the perils of fire.

Before transporting the property insured to a place other than that designated in the policy.

Before transferring the insurance on tenant's risks and claims of neighbors from one place to another.

If buildings roofed with wood or thatch, a theatre, factory or foundry should be erected upon property contiguous to that assured, the party insured shall give notice within a month at the latest after the establishment and construction of such buildings, and cause his declaration to be noted on the policy, and pay an additional premium.

ART. 10. If the party insured shall have covered the property specified in this insurance prior to the date of the present policy, or if he shall subsequently guarantee such property for whatever cause and amount whatever in any mutual association or by any underwriters of any name or denomination, he shall declare the same and cause it to be noted on the policy.

If the party insured shall have previously covered, or if he shall subsequently cover articles other than those included in this insurance, but forming part of one and the same risk, he shall likewise be required to declare the fact, and cause the same to be mentioned in the policy.

ART. 11. Upon receiving the declarations required by Articles 8, 9 and 10, the company reserves to itself the right to cancel the policy by giving simple notice to that effect, and the premiums paid or due shall belong to the company.

In default of receiving such declarations within the time specified, and of the mention of the same on the policy, the insurance shall be suspended, and the insured, his representatives or assigns, shall not have any right to indemnity in case of fire.

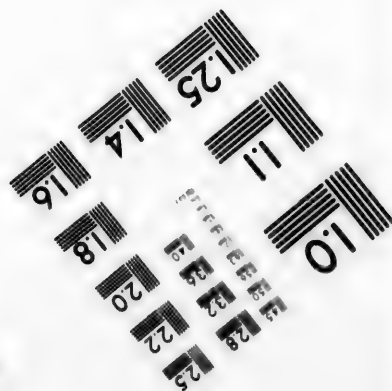
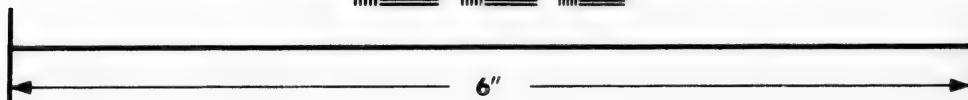
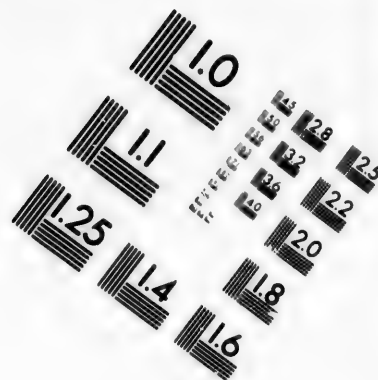
ART. 12. All concealment, or false declarations on the part of the insured, tending to diminish the degree of risk or change its character, shall render the insurance void; and it shall be void even when such concealment or false declaration do not affect the loss or damage caused to the property insured. (Art. 348, Commercial Code.)

ART. 13. Immediately upon a fire breaking out, the party insured shall employ all means in his power to arrest its progress and save the property insured.

The company will take into account all damage and cost occasioned by removal, on proper proof.

The party insured is required to give immediate notice to the manager in Paris, in case of fire.

ART. 14. Immediately after a fire, the party insured shall make a declaration of the same, at his own cost, before the Justice of the Peace of the district, and this declaration shall state the precise time of the occurrence of the fire, its duration, the known or presumptive origin of the same, the means taken to arrest its progress, as well as all other incidental circumstances; and shall also specify the nature and approximative amount of the damage sustained. A formal copy of this declaration shall be forwarded to the company without delay. The party insured shall further be required to draw up and transmit a statement of the articles burned, damaged and saved. If the party insured shall not transmit the documents required by the present article within fifteen days after the occurrence of the fire, he shall forfeit all rights and claims upon the company, unless in the case of proof that he was unable to do so.



# Photographic Sciences Corporation

**23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503**

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ART. 15. In case buildings insured by the company shall be damaged or destroyed by order of the authorities, for the purpose of checking the progress of a fire, in such case the company will make good the loss.

ART. 16. The insured shall be required to prove, by all the means and documents in his possession, the existence and value of the property insured, at the time of the occurrence of the fire, as well as the amount of the damage sustained.

The company shall be entitled to require the party insured to make oath to his statements in due form according to law.

Any party insured who shall knowingly exaggerate the amount of his damage, or who shall assume articles to have been destroyed by the flames, when they did not exist at the time of the fire, or who shall misrepresent or remove a part or the whole of the articles saved, or who shall present untrue and fraudulent documents and means as evidence, or who, finally, shall have willingly caused the destruction by fire of the property insured, shall forfeit all rights to indemnification, and the company shall be at liberty to cancel all the policies that it may have granted to said insured.

ART. 17. Damages for loss by fire shall be adjusted either by private agreement, or be appraised after investigation by two experts selected by the parties, either on the spot or elsewhere. If the experts cannot agree, they shall choose a third arbitrator, the three acting in common accord, the majority ruling. The parties may require that the third arbitrator shall be chosen at a point other than that where the party insured may reside. In case either of the parties shall fail to appoint his arbitrator, or in case the two experts shall neglect to name a third expert, the same shall be appointed, at the request of the most earnest of the two parties, by the President of the Civil or Commercial Court of the district.

In all cases the cost of appraisement shall be borne equally—one-half by the company and the other half by the party insured.

ART. 18. Real property, exclusive of the value of the soil, and personal property shall be appraised at their actual value at the time of the fire. Provisions and goods shall be estimated at the prices current on the day of the fire. Articles and goods in course of manufacture shall be appraised at the rate of the raw material, with the addition of the cost of manufacture, up to the date of fire.

ART. 19. If it should result upon valuation by private agreement or from the appraisers' formal valuation, that the value of the property insured is less than the amount insured, the party insured shall be entitled to receive compensation only for the actual and proven loss.

If, on the contrary, it should appear, that the value of the property covered by the policy exceeded at the time of the fire the sum insured, in such case the party insured shall be considered as his own underwriter for such excess, and in this capacity he shall bear his share of the loss in the proper proportion.

Should there be several insurers, and if the declarations required by the first paragraph of Art. 10 have been noted, the company, in case of fire, shall bear its due proportion of the loss adjusted, according to the conditions of the present policy.

In no case shall the company be required to pay more than the sum insured by it, and its share of the cost of appraisal.

ART. 20. The insured shall not make any abandonment, either total or partial, of the property insured, whether damaged or undamaged.

The company shall be entitled to take either all or a portion of the damaged property and materials appertaining to burned buildings, at their appraised value.

The company may, within a period specified by the arbitrators or fixed by private agreement, cause any building damaged or destroyed by fire to be repaired or reconstructed, according to the opinion of the appraisers. The company may likewise repair or replace in kind, the whole or a portion of the articles damaged or destroyed by fire.

ART. 21. The insurance of tenants' risks is based upon the total value of the building when it is occupied by only one tenant, and in this case the loss by fire is regulated in accordance with Articles 18 and 19. In case there should be several tenants, the tenant's risk is based upon the amount of rent.

If the tenant should have covered a sum equal to at least fifteen times the annual amount of his rent, the company will be responsible in his stead for the total damage up to amount of the sum insured.

If he has insured a less sum, the company will only be responsible for damage in the proportion existing between the amount insured and fifteen years' rent.

ART. 22. In case of fire, or in the case provided for by Article 15, the company reserves to itself its rights and those of the party insured, against all defendants generally, in what-over capacity they may come, and especially against tenant's neighbors, incendiaries, mutual insurance associations, underwriters, insuring for premiums or otherwise; and to this end and effect, the party insured, as far as he is concerned, hereby delegates his rights to the company, without requiring any guarantee, by this policy alone, dispensing with any other instrument of cession, transfer, deed or conveyance. The party insured is bound, at the request of the company, to confirm and reiterate this delegation and assignment of his rights in a separate instrument, drawn up before a notary; and, furthermore, to reiterate the delegation in his receipt for payment of damages.

Should fire be communicated from a building insured by the company to another building also insured by it, the company may refrain from taking proceedings against the party insured, whose building communicated the fire to the other; but this shall apply only to real and immovable property.

ART. 23. The amount of the adjusted damage is payable in cash, at the Head Office of the company.

After a loss, whatever may be the amount of the damage, the company may cancel the policy, either in full or partially, by a simple notice to that effect; the premium or premiums paid belonging to the company.

ART. 24. All suits for recovery of damages must be brought within six months after the date of the fire or the last paper sent in regarding the claim. Consequently, after the expiration of that term, the company cannot be required to make any compensation.

## REMARKS.

**427.** "*Claims of tenants,*" "*claims of neighbors,*" "*tenants' risks,*"—The *Code Napoleon* makes the party upon whose premises a fire originates liable to his tenants and his neighbors for any consequent damage. The lessee or "tenant" of a house is answerable for a fire, unless he can prove that it occurred by accident, fault of construction, or a cause beyond his control. All of these contingencies may be provided for by insurance under clause 1 and clause 21 of the policy.

SEC. 4. This is a stipulation which is held in this country and in England, to be implied by the nature of the contract.

SEC. 8. In cases of *alienation*, notice must be given and the purchaser must sign the policy; failure so to do forfeits to the company the amount of one year's premium. In case of dissolution of partnership, or failure, notice must be given.

SEC. 10. *Cancellations* caused by act of the insured—no return premium paid; when company declines to consent to other insurance, they may cancel the policy and retain premium. (886.)

SEC. 13. Company pays the cost of removal of goods in case of fire. (1680.)

SEC. 14. *Proofs of loss* must be furnished within fifteen days, or forfeit all claims, unless for good cause of delay.

SEC. 18. *Values* specified; articles in course of manufacture to be appraised at the rate of the raw material, with cost of manufacture to the time of fire. (1690.)

SEC. 19. Second clause is the co-insurance clause. Third clause is the contribution clause; "due proportion of the adjusted loss" is to be paid.

SEC. 22. In case of partial loss, either party may cancel. If loss exceed *fifty per cent.*, the policy is canceled.

SEC. 24. Limitation of action, six months.

**428.** All policies are taken for *ten* years. The policy is a lien upon the property for premiums. Commission to agents is *two full years'* premium, with no interest in renewals. All subsequent premiums are payable at the head office.

THE GERMAN PHOENIX INSURANCE COMPANY  
OF FRANKFORT-ON-THE-MAIN.

**429.** The conditions or articles of insurance here, as in the French policy, precede the contract.

GENERAL CONDITIONS.

ARTICLE 1. The company insures against damage by fire, and guarantees not only indemnification for actual and direct damage by fire, but agrees, moreover, to make good all loss that may occur to the property insured by lightning, water, damage in attempting to save and remove goods, as well as the value of missing articles upon proper proof. When buildings insured by the company shall be torn down in cases of conflagration, by order of the competent authorities, the company will make good the loss to the insured.

The company will not make good any loss by fire resulting from the effects of war, military forces, rebellion, riot, illegal force, earthquakes, volcanic eruptions, or gross neglect on the part of the person or persons insured. In case of explosion the company will not be responsible for the destruction caused thereby, but will make good any damage by fire so originated. By special agreement, and upon the payment of an additional premium, the company will become responsible for damage caused by explosions disconnected from loss by fire.

In case of damage to, or the loss of articles by water, or in attempting to save the same, the company will not grant compensation, unless the building containing them or that immediately contiguous shall be on fire. Compensation for articles missing will only be allowed when the party insured shall, within three days after the fire, give notice thereof to the proper authorities, with the exact statement of the missing objects. In any event, no compensation shall be paid for such articles until after the conclusion of the investigation ordered by the authorities. The obligations of the company towards the party insured are defined solely by the contents of the policy and renewals.

ART. 2. The company does not insure powder mills, or depots or magazines for the storage of gunpowder; and, furthermore, documents of every description, especially securities, coin and paper money, jewels, real gems, gold and silver in bars, are entirely excluded from insurance. Lace, cashmeres, ornaments, metals, gold and silver tissues, paintings, statuary, and, especially, all rare and costly articles, as well as such objects as have an imaginary and extrinsic value, whether personal or real, shall not be held to be insured unless specially specified in the policy. With regard to buildings, all parts not specially excepted in the conditions, and thus, consequently, the cellars and foundations are included in the insurance. Articles situated outside the limits specified in the policy are not considered to be insured.

ART. 3. In order that the insurance may not prove an incentive to improper gain on the part of the insured, the said party shall not be entitled to

make use of indirectly, or refer to the amount insured, or the premiums paid, or the descriptions and estimates contained in the policy as an acknowledgment, or proof, or presumption of the value, or even of the existence of the articles insured; moreover, the party insured is bound to show to the company the existence and value of the articles insured at the time of the fire by all means and certificates in his power, as well as the genuineness and amount of the damage sustained.

ART. 4. The party insured is bound to answer correctly the questions printed in the form of application, and to state accurately, in any documents executed by him and attached to said application, all facts regarding the danger of fire, and the nature of the articles proposed to be insured.

ART. 5. The party insured must declare, and cause to be stated in the policy, whether he is the owner of a part or of the whole of the articles insured, or whether he is acting as user, creditor, manager, attorney, or in whatever other capacity.

ART. 6. If, at the time of the issuing of the present policy, the property shall have been insured elsewhere, notice thereof shall be given and mentioned in the policy.

ART. 7. The insurance shall not be valid except upon due payment of the premiums. The acceptance of the policy and of the renewal receipts by the insured shall constitute his assent to the premium and duration of the insurance as therein expressed. The party insured is bound to pay his premium, without being summoned, to the agent of the company at the latter's domicile, and the company is not bound to demand payment of the same. If the annual premium upon an insurance, contracted for a term of years, shall not be paid at the commencement of each insurance year, then the insurance shall be void, but the company shall have the right to collect the premium by due process of law. The insurance shall not be considered to be again in force until after the expiration of twenty-four hours after all unpaid back premiums shall have been paid and received. No return of premiums once paid shall be made, with the exception of the case mentioned in Article No. 18. Payment of a premium or premiums previously lapsed made during or after a fire shall give no right to indemnification.

ART. 8. If, during the term of the insurance, the risk from fire should increase—if the property insured should change owners—if the property insured should be transferred to other premises than those specified in the policy, or if the property should be insured by another company, then, in each and all of these cases, the further continuance of the insurance shall be subject to the consent of the company. The party insured shall be required to apply for such consent in writing, and, if the same be granted, a memorandum to that effect shall be made.

ART. 9. In case of a fire occurring it shall be the duty of the party insured to do his utmost to save the articles insured, and to give attention to the safety of the same to his best ability, both during and after their removal. But such removal shall only be made in accordance with the provisions of Article 1, above stated, and not against the orders of the agent or contrary to the special conditions of insurance. Immediately upon the breaking out

of a fire the agent for the district must be notified; or, in his absence, the head agent. When such immediate notification is not possible, notice must, in any event, be given within twenty-four hours after the occurrence of the fire. In case there should be no agent of the company in the locality, notice of the fire must then be sent to the manager of the company.

ART. 10. In case of loss or damage the party insured shall be bound as follows, viz.:—

A. To make a deposition and statement of his own accord within three days after the fire, before the proper authorities, as to the time of the outbreak of the fire, the duration thereof, and the known or suppositious causes of the same, the means employed to extinguish it, together with any and all circumstances relevant thereto, as well as the nature and probable amount of the damage sustained. A certified copy of the formal investigation must be forwarded to the agent within fourteen days, or in case there should be no agent in the locality, then to the director of the company.

B. In the case of movable property the party insured shall, within fourteen days after the fire, transmit to the agent a statement, duly signed, specifying the articles on hand at the time of the fire, those burned, lost, saved in damaged condition, and those remaining without damage, together with a special statement of the value thereof. This document must be drawn up with the most conscientious accuracy; it must not contain a missing article as burnt or lost, nor must the existence of any article saved be withheld. The periods of time above mentioned in case of physical disability shall commence from the date of cessation of such disability.

ART. 11. The company shall have the right to require the party insured to prove the actual amount of goods on hand, and the value of the same at the time of the fire, as well as the amount of damage sustained by him by the production of his books, invoices, accounts, and other vouchers, and require him to make oath to the truth of his statements in due legal form.

ART. 12. Any party insured who shall contravene any of the conditions of Articles 4 to 11, or who shall not entirely fulfil the obligations therein expressed, or who shall be guilty of making an unwarranted declaration or a concealment of fact, as referred to in clause B of Article 10, or who shall make use of false or deceitful means in his own interest, or who, finally, shall himself set fire to property insured, or cause the burning of the same by gross negligence, shall forfeit all claim to indemnification.

ART. 13. Damage by fire shall be adjusted either by mutual agreement or by investigation and appraisalment of two experts selected in the locality. Each side shall appoint one appraiser; and in case these appraisers cannot agree, then they shall choose an umpire. The three arbitrators shall act together and submit to the majority of votes among themselves. Both parties shall be allowed to demand that the umpire be chosen in a locality other than that wherein the party insured resides. Should one of the parties neglect to name an arbitrator, the nomination of the same shall devolve, at the request of the other party, upon the presiding officer of the proper court, in accordance with Article 21. And in like manner shall it be done,

if the two arbitrators fail to agree upon the choice of an umpire at the request of the party making the motion. The cost of appraisement made by the arbitrators shall be borne in the proportion of one-half by each party. The investigation of damages, whether by direct adjustment between the party insured and the company, or by the intermediacy of arbitrators, shall only apply to fixing the amount of such damage without prejudice to the rights of the company as expressed in the policy. During the time that such damage remains undetermined, the party insured shall make no change in the disposition of the damaged goods or premises, other than that which may be necessary for the due preservation of the same.

ART. 14. Buildings shall be valued according to the combined worth of their materials and cost of erection, taking into consideration their age and condition, and any special cause of depreciation in value. The ground lot and the advantages of location, improvements, speculative value or fancy value shall not be considered in making a valuation; merchandise, raw materials, produce and live-stock shall be appraised at the current prices, in accordance with their quality and condition; machinery and manufacturing apparatus at first cost with deduction for depreciation in value on account of age, use, change of system or stagnation of such branch of industry; dry goods, household furniture, and all other articles at first cost, with deduction for decrease in value, owing to age, use and change of fashion.

ART. 15. If it shall appear either in amicable settlement or by the appraisement of experts, that the value of the articles insured is less than the amount of the insurance, the party insured can only claim indemnification in the sum of such lesser value. But if, on the contrary, it shall become manifest that at the time of the fire the value of the articles insured by the policy exceeds the amount of the insurance, then the party insured shall be considered as his own insurer for such surplus, and in such capacity he shall bear his proportionate share of the loss. If the property shall be insured in several insurance companies, and the notification required by Article 6 or 8 sent and approved, then the company will bear its share of the loss in proportion to the other amounts insured and in accordance with the conditions of the present policy. In no case shall the company be liable for more than the amount insured and its share of the cost of appraisement.

ART. 16. The party insured shall not be entitled to require the company to take either a portion or the whole of the goods insured, whether they be damaged or not. The company, on the other hand, shall have the option either of leaving both the damaged and undamaged articles in the hands of the party insured, as an equivalent for the ascertained value of the same, or of accepting the same upon allowing such value. The company shall furthermore have the right, both as regards buildings and portable property, to make good all damage by replacing the articles insured in kind.

ART. 17. All rights and claims for compensation for damages that the party insured may have or acquire in case of fire against persons liable in

general, and especially against his tenants, neighbors, the known or suspected originators of the fire, insurance companies or others, upon any legal ground whatsoever, are assigned by virtue of this policy to the company, without the necessity of any other obligation or warranty on the part of the party insured. The company will refrain from enforcing these rights against such parties as may be insured in the same, with the exception of cases where the damage may be occasioned by their gross negligence and fault. The party insured is bound, if the company shall require it, to conform the assignment of the above-mentioned rights, either by a special deed to that effect, or in his receipt for indemnification for damages.

ART. 18. The amount of damage compensation, whether the same be fixed by agreement and mutually acceptable valuation or by judicial decision, shall be paid in cash within the space of one month thereafter, at the place where the policy was issued, due receipt being given therefor. The company shall not be held to pay interest upon the amount of damages until after the expiration of said month, provided that the damages be then still unpaid. If the payment of the amount of damages should be prevented by arrest, intervention, opposition, or want of evidence on the part of the insured, his heirs and legal representatives, the company shall not be bound to deposit or pay said sum before the removal of such obstacles, or be held responsible for such delay in the payment, nor for any amount of interest whatsoever. The sum insured decreases in case of loss in the same amount as the ascertained amount of the damage sustained. Should such damage exceed one-half the amount insured, then the insurance shall cease from and after the date of the fire. Moreover, whenever a fire takes place or a claim for damages has been made, both the company and the party insured shall have the right to cancel for the future the insurance in question, as well as other and all insurance contracts in force between them, by giving a simple notice the one to the other to that effect in writing. Should such notice of cancelment emanate from the company, the premiums paid in advance and not due upon policies of several years date shall be repaid to the party insured.

ART. 19. When an insured building is subject to a mortgage, the payment of amount of loss or damage can only be made for the purpose of reconstruction, so that the mortgagee must either consent to an unconditional payment or be entitled to receive the same. Should a claim for damages made by a party insured on such a building become lost through his own fault, then the company will apply the amount of the damages, unless the policy should have lapsed through non-payment of premium, to the satisfaction of said mortgagee upon renouncing his claims upon the party insured.

ART. 20. All claims for damages not made within six months after the date of the fire, whether adjusted by mutual agreement in writing or brought before the competent civil court in due and proper form by the party insured, shall become null and void at the expiration of such term by virtue of this insurance contract.

ART. 21. The company will appear before the ordinary (not the commercial) court of the place where its policy or the renewal receipt belonging

thereto may be issued, provided that the damage by fire shall occur within the limits of the same state wherein the place whence the policy was issued is situated; otherwise, before the ordinary court of the judicial district wherein the fire may occur.

#### REMARKS.

**430.** The policies of this company cover lightning, missing articles under proper proof, damage in saving goods, etc.

It does not cover earthquakes, volcano or hurricane damages, nor damage or loss caused by gross neglect of the assured.

All parts of a building, including cellars and foundations, are covered, unless especially excluded.

The policy is no proof of either value or existence of the property insured.

The acceptance of the policy and renewal receipts by the insured constitute his assent to the premium and duration of the contract. The company is not bound to demand the premium; if not paid at commencement of the year, the policy is void, but the company may collect the premium by law. Payment of over-due premium reinstates the policy *after twenty-four hours*. No return premium is paid, except when the policy is canceled on account of loss. No privilege for the insured to cancel, except in case of partial loss.

Fires must be notified to the *district agent* immediately upon breaking out, if possible; if not, within twenty four hours, to the head office of the company. Proofs of loss must be sent in within fourteen days. In case of physical disability, then fourteen days after removal of such disability.

No change to be made in goods under appraisalment until completed, except when necessary for their preservation.

**431.** *Valuations* of buildings must consider age and condition, and *any special cause of depreciation*.

Machinery must be valued at first cost, with deductions for age, use, change of system, or *stagnation of such branch of industry*. So with machinery; any decrease or increase of value consequent upon the state of business would not be considered.

All payments for claims are to be made within one month after the settlement is made.

All mortgage policies are to be paid by rebuilding the premises burned. (1836.)

Limitation of action is six months. (1172.)

### 432. HAMBURG FORM OF POLICY

AGAINST FIRE IN TRANSATLANTIC PLACES.

COMMENCEMENT OF THE INSURANCE,	AMOUNT INSURED,
.....	.....
EXPIRATION THEREOF,	PREMIUM,
.....	.....

The undersigned Insurance Compan. — insure — under the within general, and the following special conditions, each in proportion and to the amount of the here following underwritten sum, against fire, for the term of ———, namely, from ———, 18 ———, 12 o'clock, noon, to the ———, 18 ———, 12 o'clock, noon.

#### CONDITIONS OF INSURANCE.

SECTION 1. The Insurance covers the damage which the insured property at the specified localities suffers from fire, as also from the extinguishing of the fire or the removing of the property when proved to be necessary, and which damage consists in the injury to, destruction of, or the loss of, the insured property.

The damage which may happen by means of war or invasion, by any military or usurped power, by means of civil commotion, riot, earthquake, or entirely through the fault of the assured, is excepted from this insurance. In the case of an explosion, the policy only covers the damage by fire which results therefrom, if it does not expressly state that the hazard of destruction from explosion is taken.

The obligations of the company towards the insured depend solely on the contents of the policy, and the respective renewals, and also on the accorded changes and supplements.

SEC. 2. Documents and papers of value of all kinds, gold and silver bullion, coined money, jewels not set, genuine pearls, gunpowder, gun cotton and the manufactories thereof, and tar boiling establishments, are excluded from every insurance.

Gold, jewelry, watches, laces, cashmeres, sculpture, and other objects of art, as well as all objects which have a fancy value, are only insured when they are separately specified in the policy and the value thereof stated.

If an article of property is exposed to the effects of fire or heat for any purpose of housekeeping or manufacture, and is thereby set on fire or injured, the damage which may happen to it will not be made good, but only the damage which may happen thereby to the other insured property.

The insurance of a building comprises all parts thereof which are not specifically excepted.

SEC. 3. The insurance shall only be considered valid after the premium has actually been paid.

By the acceptance of the policy, the assent with the contents thereof on the part of the assured, for the whole term of the insurance, is established.

SEC. 4. Only the party who has actually concluded the insurance, be it in his own name or on account, or by order of the owner, or of those otherwise interested (the insurance taker), is regarded as the contracting party by the company, and authorized to collect the claims arising from the policy. He is responsible not only for his own, but for all the actions and omissions of the other persons concerned in the insurance, as far as they relate to the fulfilment of the duties which the assured has, according to the contents of the policy. It is especially his duty to advise his correspondents so that they may enable him fully, and in time, to furnish all such communications and notices, which, in accordance with the conditions of the policy, have to be furnished to the insuring party, be it at the time of the application for the insurance, or during the term thereof, or after a damage by fire has taken place.

#### DUTIES OF THE ASSURED ON THE APPLICATION

SEC. 5. The contracting of the insurance, the property to be insured, and the place where it is situated, is to be exactly described, and all circumstances which may have an influence in estimating the hazard, and also the existence of other insurance elsewhere stated.

If the person on whose account the insurance is taken is not the owner of the property to be insured, the fact has to be stated.

#### DURING THE TERM OF THE INSURANCE.

SEC. 6. When, during the term of the insurance the hazard increases, or if the ownership of the property changes, except in cases of inheritance, when the insured property is transferred to other premises, when it is elsewhere insured, in such cases the insurer is entitled to discontinue the insurance for the unexpired term thereof, by returning the premium. The occurrence of such new circumstances has therefore to be given notice of by the first mail, which leaves the respective place for Hamburg, and to be communicated to the insurer on the next week-day after its arrival.

When a fire takes place on the insured premises or store, *even when no claim for damages is made, or no damage is done to the insured property, notice thereof has to be given by next mail to Hamburg*, and the same in writing to be communicated to the insurer as speedily as possible.

SEC. 7. Only such goods may be stored in the insured premises or rooms, which the police laws of the respective place permit. Gunpowder in larger quantities than is necessary for domestic purposes is not allowed.

#### DAMAGE BY FIRE.

SEC. 8. The insurance shall not be a source of profit; its only object is to make good the damage according to Sec. 1, which is to be ascertained by estimating the true and common value of the insured property at the time of the fire, *without adding profits* which might have been made.

In estimating the damage, the decrease in value of the insured property is to be considered which may have been caused by age, use, fashion, change of system, discontinuance of work, or other causes. If the value is lower than the one insured for, no matter if the latter is a *taxed* (valued) one or not, the damage will be made good only in proportion to that lower value.

*If the insured property, in part or in whole, is elsewhere insured, or if the value of the property on hand at the time of the fire exceeds the amount of the insurance, or if a special insurance condition on the part of the insured is expressly specified, then the damage will be made good "pro rata."*

If the property insured belongs to other parties, the interest of the assured in the insurance has to be shown.

SEC. 9. a. In case of a fire, the insured property must be saved as much as possible, and during the act of saving and afterwards, pains have to be taken to secure and preserve it.

b. Notice of the damages sustained by the fire has to be sent to Hamburg by the next mail which leaves the place of the fire, and there it is to be communicated in writing to the insurer on the next week day after its arrival.

SEC. 10. *The insurance in itself is neither proof nor presumption of the existence or the value of the insured property.* To ascertain the damage, the insurer has to be furnished with exact and credible proof.

1st. Of the correctness of the situation and build of the premises or store insured, as described in the policy.

2d. Of the origin of the fire, so far as it can be ascertained.

3d. Of the quantity and value of the insured property which was there immediately before the fire took place, of what was destroyed or lost thereof, and also of the damaged or undamaged property which was saved.

As far as the party who took the insurance is unable to furnish these proofs himself, for instance, by his own books, invoices, etc., they have to be shown by certificates of the proper public authorities, and by written affidavits of the party for whose benefit or on whose order the insurance was effected, or of their respective correspondents or agents, and of two blameless witnesses, and as far as it is possible, by extracts from mercantile books authenticated in the same way.

The valuation of the saved, damaged and destroyed articles is, according to Section 8, to be made by two disinterested persons, who in case they differ in opinion have to elect a third one as umpire, and that, if necessary, by lot.

The nomination of both appraisers is to be made either by the Hamburg representative, Bremen or Prussian consul, or if there are no such officers, then by any disinterested official person.

All other papers which the insured party has to furnish, have also to be certified by the consulate or other official person, who is to elect the appraisers.

These papers are to be executed as soon as feasible, then to be sent to Hamburg by next mail, after they are executed and certified to, and there

the originals are speedily to be handed over to the insurer. Besides, if the request is made, a translation thereof into the German language is to be furnished.

SEC. 11. The insurer is at liberty to have the damage ascertained by his attorney, at the place itself, without prejudice to the contents of Section 10.

#### ADJUDICATED CASES.

SEC. 12. If the duties incumbent on the assured and the insurance taker have not been discharged or been violated, particularly if the proofs or other authentications have not been furnished in time, if the insurer has been deceived by untruth, misrepresentation or concealment, or if the value of the lost or damaged article has been put extravagantly high, or if it is in any other way attempted to over-reach the insurer, or if a precautionary condition which the policy may contain is violated, then every claim for damages is forfeited, even as regards the insurance which is concerned in the same fire, and which is effected by the same insurer elsewhere for the same interested parties.

#### DISPUTES.

SEC. 13. All the disputes between the contracting parties will go before the Competent Court at Hamburg.

#### PAYMENT.

SEC. 14. After the whole amount of the indemnity and the obligation of the insurer to pay the same is fixed, by acknowledgment of both parties, by agreement or by legal judgment, the payment will be made within four weeks to the insurance taker in Hamburg.

*The insurer is under no obligation to acknowledge the assignment of a claim before it is adjusted as aforesaid, and to enter into discussion or lawsuits with other persons than the insured.*

Every claim which is not settled by consent of both parties, or sued within one year from the occasion of the damage, becomes void.

#### CONTINUATION OF THE INSURANCE AFTER THE FIRE.

SEC. 15. *After the fire, the amount of insurance decreases as much as the indemnity amounts to. If that is more than one-half, then the insurance becomes void.*

After every fire on the insured premises or store, and after any damage, claim for damages, or indemnity, both the assured and the insurer are at liberty to revoke every insurance effected between themselves by means of a simple notice in writing, which, on the part of the insurer, may be made by his agent or by his attorney. This option ceases if no use is made of it at the latest at the payment of the indemnity, or if no indemnity follows the fire, within one month after the interested parties have cognizance thereof.

If the cancellation is made on the part of the insurer, then the premium for the part of the insurance which remains after the indemnity is given, and for the term of the insurance which remains after its cancellation, will be refunded, deducting the possible year of indemnity and discount.

## RECOURSE.

SEC. 16. All rights and claims made by those interested on third parties for indemnity for the insured property will, up to the amount of the paid indemnity, go to the insurer.

## REMARKS.

**433.** This form of policy is intended for agency use, and for subscription by one or more companies upon the same risk. Its conditions and stipulations vary but little from those of the German policy already given; hence, a recapitulation of them will be unnecessary.

## AMERICAN FIRE POLICIES.

**434.** Prior to the introduction of the first NATIONAL BOARD OF FIRE UNDERWRITERS form of the fire policy, A. D. 1868, there was no uniformity in the fire insurance contract in this country, except in so far as the various forms in use by the companies of the several cities—which were more or less concurrent in each locality—may be said to have been uniform. Thus, Philadelphia, New York, Boston, Providence, Hartford, New Orleans—all centres of insurance at an early day in the present century—each had its own peculiar form, conditions, exceptions, and stipulations, differing materially, and sometimes essentially, from those of other cities.

It was with a view to harmonize these differences and produce a standard form of policy that the *National Board* form was adopted.

**435.** In treating of *American policies*, they will be divided into epochs, as nearly as may be, as follows:—

Those in use prior to A. D. 1800.

"	from A. D. 1800 to 1835.
"	" 1835 to 1860.
"	" 1860 to 1888.

The peculiarities of each epoch will be noted, thus showing the gradual advance in policy writing, from the earliest introduction of fire insurance into this country to the present time, and at the same time shedding light upon many of the earlier decisions of our courts, based upon conditions of the policy

differing more or less from those in present use, and shewing why these older decisions will not apply to more modern forms of policies.

INSURANCE COMPANY OF NORTH AMERICA,  
A. D. 1794.\*

**436.** By the President and Directors of the Insurance Company of North America:—

No. 73.



Attest,  
Eben Hazard,  
Sec'y.

*WHEREAS, Joseph Ricardo, of Philadelphia, Merchant, hath paid to the President and Directors of the Insurance Company of North America, Twelve Dollars for Insurance of Four Thousand Dollars on Dry Goods contained in the Cellar and on the Ground floor of the three story Brick Dwelling House Number Fifty-three (North), Situate on the East Side of Third Street from the River Delaware between High and Mulberry Streets in the city of Philadelphia, from Loss or Damage by Fire, whilst the said Dry Goods shall be and remain in the house aforesaid for One Year from this Fourth Day of November, One Thousand seven hundred and ninety-Five. KNOW ALL MEN BY THESE PRESENTS, that in Consideration thereof the Capital Stock, Estate and Securities of the said Corporation shall be subject to pay unto the said Joseph Ricardo, his Heirs, Executors, Administrators or Assigns, the Entire Sum of Four Thousand Dollars, and so shall continue, remain and be subject as aforesaid from time to time to be computed from the Fourth Day of November in Every year for so long time as the said Joseph Ricardo shall well and truly pay, or cause to be paid, the sum of Twelve Dollars to the President and Directors of the said Insurance Company of North America, on or before the Fourth Day of November, which shall be in each succeeding year, and the said Corporation shall agree thereto by accepting the same, which said Loss or Damage shall be paid or indemnified in manner aforesaid within thirty days after proof of Loss; and if any dispute shall arise respecting the same between the Corporation and the ASSURED, such difference shall be submitted to the judgment and determination of Arbitrators indifferently chosen, whose award in writing shall be conclusive and binding to all parties.*

**\*437.** The author takes this occasion to tender his thanks to Charles Platt, Esq., president of this venerable institution, for his kindness in furnishing this policy (being No. 73), issued by the company, Nov., 1795, and other valuable information. "May his shadow never be less." (87.)

PROVIDED always, nevertheless, and it is hereby declared to be the true intent and meaning of this Policy, that the said Stock, Estate and Securities of the said Corporation shall not be subject or liable to pay or make good to the Assured any Loss or Damage by Fire which shall happen by Invasion, Foreign Enemy, Civil Commotion, or any Military or usurped powers whatever; And provided also, that this Policy shall not take effect, or be binding to the said Corporation in case the said Assured shall have already made, or shall hereafter make, any other Assurance upon the Goods aforesaid, unless the same shall be allowed of and specified on the back of this Policy; Or if the House above mentioned containing the goods of the said *Joseph Ricardo* shall, at the time when any such fire shall happen, be in whole or in part occupied by any person who shall use or exercise therein the Trade of a Carpenter; Joiner; Cooper; Tavern Keeper; or Inn holder; Stable Keeper; Bread or Biscuit Baker; Sugar Baker; Ship Chandler; Boat Builder; Malt Drier; Brewer; Tallow Chandler; Apothecary; Chemist; Oil and Colourman; China, Glass or Earthen Ware Seller; or shall be made use of for the Storing or Keeping of Hemp, Flax, Tallow, Pitch, Tar, Turpentine, Rosin, Salt Petre, Sulphur, Gun Powder, Spirits of Turpentine, Shingles, Hay, Straw, Fodder of any kind, Corn unthreshed, Oil, Wax, Distilled Spirits \_\_\_\_\_ but that in all, or any of the said Cases, this Policy, and every Clause, Article and Thing therein contained shall be void and of none effect: otherwise it shall remain in full force and virtue.

IN WITNESS whereof the said Corporation have caused their Common Seal to be hereunto affixed on the *Fourth* Day of *November* in the Year of our Lord One thousand seven hundred and *ninety-five*.

N.B.—This Policy to be of no force if assigned, unless such assignment be allowed by an Entry thereof in the Books of the Company.

*It is understood that the goods above insured are the Property of the Assured, and not held on Assignment.*

4000. *Four thousand Dollars.*

J. M. NESBITT, Presid't.

*Dry Goods* Dc. 4000. a 30 Cts. *Drs.* 12.

#### REMARKS.

438. The stipulations and exceptions of the contract are embodied in the policy prior to the signatures, and embrace but a limited portion of those so common in modern policies.

*Reinstatement* is provided for, as an underlying principle of the contract, but time not limited.

*Duration* of the contract is computed from the day of execution to the same day in the succeeding year. No limitation

as to the hour of commencing or termination, as in the modern instrument, though such limitation is to be found in the Amsterdam policy of 1744, fifty years prior to this.

*Arbitration* is not confined to the amount of loss, but the whole matter is left open.

*Invasion, insurrection, foreign enemy, etc.*, is made an exceptional clause, as in the early English forms.

*Other insurance* must be noted and indorsed, but nothing is said of pro rata contribution by such other insurance, in case of loss.

*Memorandum articles* must be specifically insured, as in the modern contract, though the classes of articles differ somewhat.

*Assignments* must be endorsed upon the books of the corporation. Nothing is said of indorsement upon the policy.

*Notice of loss*—no provision made for.

*Preliminary proofs* not required by the terms of the policy; though the loss is payable in "thirty days after proofs of loss."

*Renewals* can be made by consent of the company.

*Policy-fee* was *sixty-seven cents*.

The *classification of hazards* was somewhat mixed, and restricted as well, as compared with the present day.

*Limitation clause*.—No limit is put to the time when suits may be brought.

*Application and Survey*—none referred to, though they were in use by the old Hand-in-Hand, some years previous.

## THE MUTUAL ASSURANCE SOCIETY

OF VIRGINIA, A. D. 1794

**439.** The plan of this society was suggested by *William Frederick Ast*, a Prussian, then residing in Richmond, "and is supposed to be modeled after a system of *mutual guarantee*, introduced by Frederick the Great," although it was virtually a *perpetual insurance* upon a mutual plan. (90.)

**440.** The assured, in addition to his premium, executed what was termed a "declaration," under seal, by which he pledged the property insured for the payment of whatever requisitions might be necessary to meet losses by fire or lightning. The society, in return, issued a perpetual policy, which followed the property through successive changes of title, and could only be terminated by formal withdrawal, the destruction of the building, the storage therein of prohibited articles, or the taking out other insurance upon the same property beyond four-fifths of the value. The premium proper was paid only on the first insurance; during the succeeding years a certain percentage of the premium, termed "the quota," only was paid.

**441.** The property was re-valued every seven years, and a new policy issued, based upon the new valuation; insurance was allowed to four-fifths of the verified value of the property, and if a less amount was taken, *the insured was made co-insurer for the difference!* This is a peculiarity of the *Fire-Cassa* of Holland. (65.)

**442.** It was managed by a president and directors, while a "Principal Agent" and a "Cashier-general" were charged with the administrative duties; the latter gave bonds to the amount of \$100,000. His duties were to receive the funds of the society, and invest the same as directed, in certain securities, which "are to be put immediately into an iron chest, deposited in some place of security, *with four substantial locks*, each of a different construction from the other; one key of which is to be delivered to the president, two others to two directors, and the fourth to the cashier-general."

**443.** The lowest rate of premium was *one* per cent.; the highest was *five* per cent. Insurance in excess of \$8,000, up to \$14,000, paid *half* per cent. extra; from \$14,000 to \$20,000 (which was the maximum written), paid *one* per cent. *more*. (488.) "*Gunpowder mills, and such great hazards,*" were insurable only by special contract!

**444.** A distinct house or tenement is thus curiously described: "A building is considered what is, or stands by itself, or between two whole party walls."

**445.** Where buildings were so situated that, on account of *trees* or other obstructions, the fire-engines could not play upon them from at least two sides, they paid *half per cent. more premium.* (**83. 85.**)

**446.** The entire plan was found to be crude and ill-digested; constant reference was made to the General Assembly, for some change or modification in its charter. And now, after a number of years, the society has settled quietly down as a perpetual insurance company, covering a large amount of property throughout the state of Virginia, to which its operations are confined, to the ample satisfaction of all concerned.

**447.** The company had several kinds of policies in use—one for large towns, and one for small towns. A new policy was issued every *seven* years, upon the re-valuation of the risk. Forms of an original and of a re-valuation policy are herewith given. It is to be regretted that fac-similes cannot be offered, as there is as much peculiarity in the *style* as in the wording of the policy.

**448.**

## ORIGINAL POLICY—No. 585.

THIS Policy of Assurance, Witnesseth, that *Mrs. Martha Dameron, Amx. of Oney S. Dameron, deceased, of Norfolk,* ha— entered the building herein mentioned, for assurance from loss or damage by fire, in the Mutual Assurance Society, against fire on buildings of the state of Virginia, as per her declaration dated the *twenty-seventh* day of *October*, 1800, marked No. 289, and filed in the office, to wit: A *Kitchen*, marked *B*, the walls built of *wood*, covered with *wood*, situated on *Back of her house A on Fenchurch street at the said place* now occupied by *Hy Prescot*, between *Mr. Boush's vacant Lot* and that of a *New House not finished belonging to O. S. Dameron, Esq.*, in the county of *Norfolk*, the particulars of the situation, dimensions, and building, are as by description, No. 289, which *she has* deposited in this office, and valued at.....150 dollars  
deduct..... 30 ditto.

remain nett.....120 dollars, which said *One Hundred and Twenty* dollars, is the real sum insured, and on which *she has* paid *four* dollars *thirty-two* cents premium, and *One* dollar ——— cents, for tax on the policy, and the said *Martha Dameron* having agreed to abide by, observe and adhere to the constitution, rules, and regulations of the said society, as are already or may hereafter be established:

NOW Know all Men by these Presents, That the said Mutual Assurance Society shall after this day be subject and liable to pay immediately after

due proof, agreeable to the form established by the said society, that the fire actually happened unto the said assured, or to *her* heirs, executors, administrators, or assigns, all such damage or losses (not excepted against by the constitution, rules, and regulations, of this society, and by this policy) as shall happen by fire or lightning to the property above mentioned for ever, to any amount above three per cent. on the amount insured on said building, and not exceeding the sum of *One Hundred and Twenty* dollars: *Provided always*, that the said building is at this instant in existence; and in case of partial loss the said *Martha Dameron* shall be paid such part thereof in proportion to the sum insured thereon, and shall bear such part in proportion to the sum *she* runs the risk on *herself* under the limitations aforesaid, but what may be saved of any building hereby insured is to be valued, and the amount shall be divided between the insured and the society, according to the sum insured, and the sum on which the said *Martha Dameron* runs the risk *herself*; but in case of a total loss, the said *Martha Dameron* shall be paid in full, as far as the sum insured goes. And that the said building shall be valued at the end of every seven years according to the rules and regulations of the society, and in case of loss after the expiration of the first seven years, the said *Martha Dameron* shall be paid according to the last valuation not exceeding the said sum of *One Hundred and Twenty* dollars, nor four-fifths of the septennial verified valuation; and that the stock, security, and funds of the aforesaid Mutual Assurance Society, shall not be liable to make good any loss or damage by fire, occasioned by riots, civil commotions or insurrections, invasion of foreign enemies, sieges or other military or usurped force, or hurricanes, or earthquakes, or in cases where it is proved that the proprietor of the said building insured did wilfully occasion the fire directly or indirectly: *Provided also*, that the members of this society are not to be liable in case of loss further than they are made so by the Acts of Assembly, constituting the said society. In case that the building herein mentioned has been already or shall be hereafter insured by any policy issued from this office, or by any agent for this office, or any other insurance company, or by any private insurers; such other insurance must be made known to this office, mentioned in or endorsed on this policy and such sum or sums including what is insured in this Assurance Society must not exceed in all four-fifths of the verified value of the said building, otherwise this policy to be void.

In witness whereof, *three Directors* of the said Assurance Society have hereunto set *their* hands and the seal of the office, at the city of Richmond the *Twenty-Eighth* day of *November* one thousand *Eight hundred*.

Sealed and delivered }  
in the presence of }

W. F. Ast,  
PRINCIPAL AGENT.

ROBERT MITCHELL,  
JACOB I. COHEN,  
ROBERT POLLARD.

N. B.—The premiums may, if found necessary, be raised by any subsequent general annual meeting: This it will be found is provided for in the law of incorporation under the denomination of *quota*.

## MUTUAL ASSURANCE SOCIETY OF VIRGINIA.

## Re-valuation Policy.

**449. No. 4298. This Policy of Assurance** (for the re-valuation of the buildings declared for, per former declaration No. 1583) **Witnesseth**, That *John Robinson*, residing at *Fredericksburg*, in the county of *Spotsylvania*, have entered for assurance, against loss or damage by fire, in the **MUTUAL ASSURANCE SOCIETY** against fire on buildings of the State of Virginia (for the Towns) as per *their* Declaration, No. 4298, filed and recorded in the general office, the following buildings occupied by *themselves*, situated on the north side of *Hawk Street* in the Town of *Fredericksburg*, Between the street of *Pitt* on the North, *Hawk Street*, South, *Princess Ann Street*, East, and *Charles Street* on the West, in said town of *Fredericksburg*, and in the county of *Spotsylvania*, to wit :

Buildings used as	Marked	The walls built of	Covered with	Valued at dollars.	Nett amt. insured.		Premium.		Burnt, trans'd., withdrn., pulled down, or removed.
					Dolla.	Cts.	Dolla.	Cts.	
Dwelling Hse	A.	Wood	Wood	2,000	1,600	00	49	60	
Kitchen.....	B.	Wood	Wood	300	240	00	7	44	
Meat House..	C.	Wood	Wood	100	80	00	2	88	
					\$1,920	00	\$59	92	

Which sum of *Nineteen hundred and Twenty* dollars is the real sum insured, and on which there has been paid *Sixty-five dollars and sixty Cents* premium; and now this day *No* additional premium; and *they* the said assured having, by the above mentioned declaration, agreed for *themselves* and *their* heirs, executors, administrators and assigns, to abide by, observe and adhere to the constitution, rules and regulations of this society, which are already, or may hereafter be established for the said Assurance Society :

Now. **Know all men by these presents**, that the aforesaid Assurance Society shall be subject and liable to pay, agreeably to the acts of the Legislature of Virginia, and the constitution, rules and regulations which are already, or may hereafter be, established for the said Assurance Society, unto the said assured, or to *their* heirs, executors, administrators or assigns, all such losses or damages as shall happen by fire or lightning, after sun-set of this day, to the above-mentioned building, according to the true intent and meaning of the said acts of the Legislature of Virginia, and the constitution, rules and regulations of the said society as aforesaid: *Provided*, that the aforesaid buildings are at this instant in existence, and that if *they* or any part thereof are or hereafter shall be insured elsewhere, this policy shall be void.

**In witness whereof**, the principal agent of the said society has signed this present policy, with the seal of the office annexed (the same having been

countersigned by his chief clerk,) at the city of Richmond, this *Thirty-first* day of *December* one thousand eight hundred and *Twenty-two*.

*Countersigned,*

LEWIS M. RIVALAIN,

*Chief Clerk.*

**450.** NOTE.—The author takes occasion to tender his acknowledgments to Col. John B. Danforth, Secretary of the Society, and J. H. Montague, Esq., of Richmond, Va., for their attention in furnishing *original policies* of the Society, with the autograph signatures of the early founders of the institution, which are highly prized as relics.

## MASSACHUSETTS FIRE INSURANCE COMPANY

OF BOSTON.

**451.** The following is a copy of a policy issued by this old institution, A. D. 1797.

GOODS,

No. \_\_\_\_\_,

*By the President and Directors*

OF THE

MASSACHUSETTS FIRE INSURANCE COMPANY.

THIS POLICY OF INSURANCE WITNESSETH, That whereas JOSEPH HAVEN of *Portsmouth*, in the State of *New Hampshire*, hath paid to the President and Directors of this Corporation, the sum of *Forty-two Dollars and fifty cents*, for insurance for Loss or Damage by FIRE, for the term of One year, and no longer, Commencing at twelve o'clock at noon on this *sixteenth* day of *October*, One thousand seven hundred and ninety-seven, and ending on the *sixteenth* day of *October*, One thousand seven hundred and ninety-eight, at twelve o'clock at noon, viz.: On *Five Thousand Dollars*, in *Merchandise of various kinds*, in a brick store situated in *Market Street*, Corner of *Bow Street*, *Portsmouth, N.H.*, as particularized and set forth, in the Declaration of the said *Joseph Haven*, dated the *sixteenth* day of *October*, 1797, and lodged in this office.

NOW, KNOW ALL MEN BY THESE PRESENTS, That from the date hereof, the Capital, Stock, and funds of the said Corporation shall be subject, and liable to pay, make good, and satisfy, unto the said *Joseph Haven*, his Heirs, Executors, or Administrators, within thirty days after proof thereof, according to the tenor of the Printed Proposals, dated the *second* day of *September*, 1795, and hereunto annexed, all such Loss or Damage (provided the same shall amount to THREE PER CENT. on the sum insured [5] ), which the said Insured shall suffer by Fire, in the merchandize above mentioned, during the term aforesaid, not exceeding, however, the sum of *Five Thousand Dollars*; and provided said *merchandize* be and remain in the store as afore-

said, and not elsewhere, except allowed by endorsement previously made at this Office; Unless they, the said President and Directors, shall, within said thirty days, furnish said Insured with the like quantity of *Merchandise* of the same Sort and Kind, and of Equal Value and goodness with those burnt or damaged by Fire.

And in case any dispute shall arise, respecting the same, between the Corporation and the Insured, such Difference shall be submitted to the judgment and determination of Arbitrators to be mutually chosen, whose Award in Writing shall be considered conclusive and binding on all Parties.

PROVIDED ALWAYS, and it is hereby declared to be the true Intent and Meaning of this Policy, that the said Capital, Stock and Funds of the said Corporation shall not be subject, or liable to pay, or make good, to the Insured, any Loss or Damage by Fire, which shall happen by any Invasion, foreign Enemy, civil Commotion, or any military or usurped Power whatever, PROVIDED ALSO that this Policy shall not take place or be binding on the said Corporation, in case the Insured shall have already made, or shall hereafter make any other Insurance upon the merchandize aforesaid, unless the same shall be allowed of, and endorsed on this Policy: Or if the Building above-mentioned shall at the Time, when any such Fire may happen, be in whole or in part occupied by any Person who shall use or exercise therein the Trade of Carpenter, Joiner, Cooper, Tavern-Keeper, or Inn-Holder, Stable Keeper, Baker, Sugar-boiler, Rope-maker, Boat-Builders, Malt-strier, Brewer, Tallow-Chandler, Apothecary, Chemist, Oil and Color Man, China, Glass or Earthen-ware Seller, or shall be made use of, for the storing or keeping of Hemp, Flax, Tallow, Pitch, Tar, Turpentine, Rosin, unslacked Lime, Salt-petre, Sulphur, Gun-Powder, Spirits of Turpentine, Aqua Fortia, Spts. Nitri Fortis, Oil of Vitriol, Hay, Straw, Fodder of any kind, Corn unthrashed, Oil, wax or distilled spirits, in all or any of the said Cases, these Presents, and Every Clause, Article and Thing herein contained, shall cease, determine and be utterly void and of no Effect, unless the Consent of the President and Directors by endorsement hereon is first obtained, and the additional premium paid.

IN WITNESS WHEREOF, we (three of the Directors of said Company), have herunto set our Hands and Common Seal, this sixteenth Day of October, in the year of our Lord One thousand seven hundred and ninety-seven, and Twenty-Second year of the Independence of the United States of America.

Sealed and Delivered in  
presence of us,  
WILLIAM SCOLLAY,  
JAMES HICKS.

JONATHAN MASON, JR.,  
THOMAS PERKINS,  
JNO. PERKINS.

The President and Directors Consent, that in Consideration of an additional premium received, the Building herein mentioned being occupied for the Vending of Groceries, shall not affect the validity of this Policy, anything in the printed form to the contrary notwithstanding.

THOMAS PERKINS.

## REMARKS.

**452.** A slight advance is noticeable in this policy. Like that of the Insurance Company of North America, it has the conditions and exceptions in the body of the contract, which is drawn in the form of a legal instrument. We notice as follows:—

*Reinstatement* is to be made within thirty days.

The *duration of the contract* is from twelve o'clock at noon of the day of commencement until the same hour of the day of expiration—the first mention we find of this clause in American policies. Except that at Hartford, A. D. 1794.

*Loss is payable* within "thirty days after proofs, in accordance with the *printed proposals*."

*Application* of the insured is referred to as his "*declaration*," which seems to have been "annexed."

All *losses* must reach *three per cent.* of the policy, or no claim will arise. This is taken from marine insurance (5), and is to be found only among the early fire policies.

*Arbitrators* have general powers.

*Other insurance* must be noted and indorsed upon the policy; but nothing is said of pro rata contribution by such co insurers.

*Memorandum hazards* embrace almost identically the same as the Insurance Company of North America, which seem to have been copied for the "Royal Exchange" policy, London. (60.)

*Notice and proofs of loss*; no requirements as to these essentials of the modern policy are found in this contract, though they may have been inserted in the "*printed proposals*" referred to above.

No *cancellation* is provided for; nor is anything said about *renewals*.

## EAGLE FIRE COMPANY OF NEW YORK

(A. D. 1806).

**453.** THIS INSTRUMENT OR POLICY OF ASSURANCE WITNESSETH, That THE EAGLE FIRE COMPANY OF NEW YORK, in consideration of \_\_\_\_\_ Dollars, to the Corporation paid, the receipt whereof is hereby acknowledged, HATH agreed to insure, and DOth hereby agree to insure, \_\_\_\_\_

*(Description of Property).*

IN CONSIDERATION of which premises, the Eagle Fire Company of New York Doth hereby covenant and agree with the said \_\_\_\_\_ Executors, Administrators and Assigns, to pay and satisfy all Loss or Damage which the Assured or \_\_\_\_\_ Assigns shall or may sustain by FIRE, upon the Property hereby Insured, not exceeding in amount the said Sum of \_\_\_\_\_ Dollars as particularized above, if such, Loss or Damage shall be sustained within the space of \_\_\_\_\_ from the Day of the date of these Presents.

AND THIS CORPORATION doth further covenant and agree to and with the said Assured, \_\_\_\_\_ Executors, Administrators and Assigns, that this Assurance shall continue and be in force from the Expiration of the time before-mentioned for its duration, for so long as the said Assured or \_\_\_\_\_ Assigns shall continue to pay the like Rate of Premium, as hath been paid for this Insurance, for so long as this Corporation shall agree to accept, and actually receive the same from the Assured or \_\_\_\_\_ Assigns, PROVIDED that the premium for a Continuance of the Insurance shall be actually paid by the Assured or \_\_\_\_\_ Assigns to this Corporation, before the Day limited for the termination of the Risk, and such payment endorsed on this Policy or a Receipt therefor given by this Corporation; And it is further agreed, that the amount of such Loss or Damage, as the Assured or \_\_\_\_\_ Assigns, shall be Entitled to receive by virtue of this Policy, shall be paid within Sixty Days after notice and proof thereof made by the Assured in conformity to the Proposals of this Corporation annexed to this Policy.

**Provided always,** and it is hereby declared, that this Corporation shall not be liable or bound to pay the said Assured, in this Policy named, \_\_\_\_\_ Executors, Administrators or Assigns, for any Loss or Damage by Fire that may happen or take place in consequence of Invasion, Civil Commotion, Riot, or any Military or Usurped Power whatsoever.

PROVIDED ALSO, that in case the Assured shall have already any other Insurance on the hereby Insured Premises, \_\_\_\_\_ shall notify the same to this Corporation before, or at the time of the Execution of this Policy, and cause the same to be Endorsed thereon, or this assurance shall be void and of no effect; and if the said Assured, or \_\_\_\_\_ Assigns shall hereafter make any other Insurance on the hereby Insured premises \_\_\_\_\_ shall with all reasonable diligence notify the same to this Corporation, and have the same endorsed on this Instrument, or otherwise acknowledged in writing, by this Corporation, or in default thereof this Policy shall cease and be of no further effect.

AND IT IS FURTHER DECLARED AND AGREED, that in case of any other Insurance being made upon the Premises hereby Insured, either prior or subsequent to the date of these Presents, the Assured shall not, in any case of Loss or Damage, be entitled to demand or recover, on this Policy, any greater proportion of the Loss sustained than the amount hereby Insured shall bear to the whole Amount of the several Insurances made or to be made on the Premises Insured by this Policy.

AND IT IS AGREED AND DECLARED, to be the true intent and meaning of the Parties hereto, and of these Presents, that in case the above-mentioned (store) shall at any time after the making, and during the time this Policy would otherwise continue in force, be appropriated or used for the purpose of carrying on or exercising the trade, business or vocation of a Soap-Boiler, Tallow Chandler, Brewer, Maltster, Baker, Rope-Maker, Sugar Refiner, Distiller, Chemist, Varnish Maker, Paper Maker, Stable Keeper, Tavern Keeper, China, Glass or Earthenware Seller, Oil and Colourman, Printer, Cooper, Carpenter, Cabinet-Maker, Coach Maker, Boat Builder, Ship Chandler, or Apothecary, or any manufactory which requires the use of Fire Heat, or shall be used for the purpose of Storing therein Gunpowder, Hemp, Flax, Oil, Pitch, Tar, Rosin, Turpentine, Spirits of Turpentine, Aqua Fortis, Straw, Hay, Grain, Unthreshed Fodder, Distilled Spirits, or other hazardous Goods, that then and from thenceforth, so long as the said (store) shall be appropriated or used for any or either of the purposes aforesaid, These Presents shall cease and be of no force or effect, UNLESS OTHERWISE ESPECIALLY AGREED BY THIS CORPORATION, and such agreement be signified in writing. AND IT IS MOREOVER DECLARED that this Policy, or the Insurance hereby intended to be made, does not Comprehend or Cover any Books of Accounts, Written Securities, Deeds, or Evidences of title of Lands, Bonds, Bills, Notes, or other Evidences of Debts, Money or Bullion.

AND IT IS UNDERSTOOD AND AGREED, as well by this Corporation, as by the assured, named in this Policy, and all others who may become interested therein, that this Insurance is made and accepted in reference to the Proposals which accompany these Presents, and in every Case the said Proposals are to be used to explain the Rights and Obligations of the parties, except so far forth as the Policy itself specifically declares those Rights and Obligations.

IN WITNESS whereof, the said Corporation have Caused their COMMON SEAL to be affixed to these Presents, and the same to be signed by their PRESIDENT and SECRETARY, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord One thousand Eight hundred and \_\_\_\_\_.

N. B.—This Policy is not assignable, unless by consent of the Corporation manifested in writing.

Attested, \_\_\_\_\_ President.

\_\_\_\_\_  
Secretary.

#### 454.

#### PROPOSALS FOR INSURING

HOUSES, BUILDINGS, STORES, SHIPS IN HARBOUR, GOODS, WARES AND  
MERCHANDISE

*From Loss or Damage by Fire.\**

THE Legislature of the State of New York having incorporated the Eagle

455. \*All policies issued in New York, from A. D. 1800 to 1835, or later, contained this or a similar form of "Proposals for Insurance," printed in large type, and preceding the "Classes of Hazards." It was a kind of advertising sheet setting forth the merits of the company. (171.)

In this instance the second clause, indicated by \*., was evidently intended to give notice that this was *not* a mutual company. (94.)

Fire Company of New York, with a Capital of Five Hundred Thousand Dollars (with the liberty of increasing the same, if the business of the Company should require it, to One Million of Dollars), for the sole purpose of insuring Buildings and every kind of personal Property from Loss or Damage by FIRE; and the Capital of Five Hundred Thousand Dollars having all been paid, or secured, to be paid, according to Law;—the Directors feel a particular satisfaction in offering to their Fellow Citizens throughout the United States, the Means of Security against that kind of Loss which frequently, in an UNEXPECTED MOMENT, involves in Destruction the Earnings of a life of Industry and Frugality, and reduces the Independent and Affluent, together with their Families, to Poverty and Distress. To provide an additional Guard against Calamities of this Nature, has been the primary Motive of This INSTITUTION; and the Directors engage to conduct its Concerns, with a Fairness, Candour and Liberality, which will justly entitle it to the Confidence and Patronage of the Public.

•• No insured Person will be liable to make good the Losses of others; but in case of Fire, the Sufferer will be fully indemnified. The Company also makes good Losses on Property burnt by Lightning.

**456. CLASSES OF HAZARDS, AND RATES OF ANNUAL PREMIUM FOR INSURANCE AGAINST FIRE.**

No. I. <i>Hazards of the First Class.</i>	No. II. <i>Hazards of the Second Class.</i>	No. III. <i>Hazards of the Third Class.</i>	No. IV. <i>Hazards of the Fourth Class.</i>
Brick or Stone Buildings covered with Slate, Tile or Metal.	Brick or Stone Buildings covered with wood.	Buildings the sides of which are part of Brick or Stone, and part of Wood.	Buildings the sides of which are entirely of Wood.
Goods not hazardous contained in such Buildings.	Goods not hazardous contained in such Buildings. Hazardous Goods contained in Buildings of the First Class.	Goods not hazardous contained in such Buildings. Hazardous Goods contained in Buildings of the Second Class.	Goods not hazardous contained in such Buildings. Hazardous Goods contained in Buildings of the Third Class.
<i>For sums not exceeding 10,000 Dollars in one Risk.</i> 25 cents per 100 Dollars per annum.	<i>For sums not exceeding 10,000 Dollars in one Risk.</i> 37½ cents per 100 Dollars per annum.	<i>For sums not exceeding 10,000 Dollars in one Risk.</i> 50 cents per 100 Dollars per annum.	<i>For sums not exceeding 10,000 Dollars in one Risk.</i> 75 to 100 cents per 100 Dollars per annum.

•• *Ships in Port, or their Cargoes, Ships Repairing or Building, may be Insured against Fire.*

†† This manner of classing Hazards will give a general idea of the Rates of Insurance, but there will necessarily be an increase of Premium in all cases where the local situation and other circumstances increase the Risk; such as joining, or being contiguous to Wooden Buildings, or Buildings occupied in carrying on hazardous Business—distances from Water—to Engines, or Firemen in the Town or Place, &c., &c. The Premiums may

also, in some cases, be reduced on Wooden Buildings in the Country, when standing single or detached, or attended with circumstances of peculiar Security :—But in all cases, if the Sum to be insured ~~on~~ or ~~in~~ the same Building exceeds 10,000 Dollars, additional Premium will be required.

~~100~~ Soap-Boilers, Tallow Chandlers, Brewers, Maltsters, Bakers, Rope Makers, Sugar Refiners, Distillers, Chemists, Varnish Markers, Stable Keepers, Tavern Keepers, China, Glass, or Earthenware Sellers, Oil and Colourmen, Turpentine works, Paper Mills, Printing Houses, Coopers, Carpenters, Cabinet Makers, Coach-Makers, Boat Builders, Ship Chandlers, Apothecaries, Theatres, Mills and Machinery, and all Manufactories that use Fire Heat, are deemed Extra Hazardous, and must be particularly described in the policy; and for such Risks, an additional Premium will be required.

**457.** This Table of "Classes of Hazards and Rates" was evidently copied from the policy of the Phoenix Insurance Company of London. (**95.**)

#### **458.**

#### CONDITIONS OF INSURANCE.

I. ALL applications for Insurance must be made at the Office of the Company in writing, and the Subject offered for Insurance accurately described.

II. If the property offered for Insurance is within the District of a Surveyor of this Company, he will examine and report thereon; but if not within any such District, then the applicant must himself furnish an accurate and just Description thereof, viz.: of what Materials each Building is constructed; whether occupied as Private Dwellings, or how otherwise; where situated; the Names of the present Occupiers; how situated with respect to other Buildings. And in the Insurance of Goods, Wares and Merchandise, the Place where the same are deposited is to be described; also, whether such Goods are of the kind denominated Hazardous, and whether any Manufactory is carried on in the Premises, all which is to be certified and attested in such Manner as the nature of the case may admit. And if any Person or Persons shall insure his or their Buildings or Goods, and shall cause them to be described in the Policy otherwise than they really are, so as the same be charged at a lower Premium than is herein proposed, or if such Description be false, or fraudulent, such Insurance will be void and of no effect.

III. Goods held in Trust, or on Commission, are to be declared as such; otherwise the Policy will not Extend to Cover such Property.

IV. Every Policy of Insurance made by this Company shall be sealed with its seal, and signed by the President and Secretary; and the Person for whose Interest the Insurance is made must be declared and named therein; nor can any Policy, or Interest therein, be assigned but by consent of the Company expressed by Endorsement made therein.

V. No Insurance will be considered as made or binding, until the Premium is paid.

VI. Persons insuring Property with this Company, and who have already made other Insurance on the same Property, shall give notice thereof in writing, at the Company's Office, before or at the time of the execution of this Policy; and Persons who, after insuring Property with this Company, have Insurance made on the same Property elsewhere, shall, with all reasonable Diligence, notify the same in writing at the Office of the Company, and have the same endorsed on the Policy, or otherwise acknowledged in writing; in default whereof, the Policy shall cease, and be of no effect; and in case of Loss, each Party insuring shall be liable to the Payment of a Rateable Proportion of the Loss or Damage which may be sustained.

VII. No Loss or Damage by Fire will be paid that may happen or take place in Consequence of any Invasion, Civil Commotion, Riot, Military or Usurped Power whatever.

VIII. Books of Account, Written Securities, Notes, Bills, Bonds, Deeds, Ready Money, or Bullion, cannot be insured.

IX. Jewels, Plate, Medals, or other Curiosities, Paintings, and Sculptures, are not included in any Insurance, unless such Articles are specified in the Policy.

X. All Persons insured by this Company, sustaining any Loss or Damage by Fire, are forthwith to give Notice to the Company, and as soon after as possible, to deliver in as particular an account of their Loss or Damage, signed with their own Hands, as the Nature of the case will admit of, and make Proof of the same by their Oath, or affirmation, and by their Books of Accounts, and other proper Vouchers, as shall be reasonably required; and shall make Oath, whether any and what other Insurance is made on the same Property; and shall procure a Certificate under a Hand of a Magistrate, Notary Public, or Clergyman (most Contiguous to the Spot where the Fire happened, and not concerned in such Loss), that they are acquainted with the Character and Circumstances of the Person or Persons insured; and do know, or verily believe, that he, she or they, really, and by Misfortune, and without Fraud or Evil Practice, have sustained by such Fire, Loss and Damage to the amount therein mentioned; and until such Affidavits and Certificates are produced, the Loss shall not be payable. Also, if there appears any Fraud, or false Swearing, the Claimant shall forfeit his claim to Restitution or Payment by Virtue of this Policy.

XI. In case any Difference shall arise, touching any Loss or Damage, it may be submitted to the Judgment of Arbitrators, indifferently chosen, whose Award in writing shall be binding on the Parties, and when any Loss or Damage shall happen, the Company shall pay for the same in Sixty Days after the Loss shall have been ascertained and proved, without allowance of Discount, Fees, or any Deduction whatever.

XII. Insurance may be made for Seven Years, by paying the Premium for Six Years; and for a less number of Years than Seven, a reasonable Discount will be allowed.

## REMARKS.

**459.** The policy, with its classification of hazards and conditions, is inserted in full, as being the form generally used about A. D. 1800, and the first approach to the modern form, and as indicating the progress made in the art of policy-writing up to that time. It will be noted that the body of the policy is very *wordy*, and embraces many provisions which are repeated among the conditions attached thereto—a peculiarity continued in the policies of New York city companies for the subsequent quarter of a century or more.

The instrument is in form a legal contract, drawn without reference to economy in the use of words, and is under seal.

The *duration* is within the space of ——— from the day of date, with no limit as to the hour of commencement or expiration.

**460.** The *contribution* clause (**1991**) is here first met with in American policies, and provides for pro rata contribution, "as the amount of the policy bears to the total amount of insurance on the property," in the body of the instrument, while among the conditions it reads, "Parties insuring shall be liable to the payment of a 'ratable proportion of the loss or damage' which may be sustained." This incongruity is to be found in all of the policies of New York city companies for the next half of a century. (**2008.**)

*Applications* and surveys are here made obligatory, but are not made a part of the policy. *Misrepresentation* is provided against.

*Notice* of loss is made necessary *forthwith* (**1629**), and *proofs of loss* as soon as possible. *Vouchers* and *magistrate's certificate* are called for. This clause is almost identical with the present form, and is the first time these requirements have been met with. The form of magistrate's certificate (**1914**), required by the *Washington Insurance Company* (A. D. 1802), differs somewhat from this, and, if adopted at the present day, the certificate *might* have a value which it fails to possess under the present form. (**1929.**)

*Losses* were paid in sixty days after proofs, "without discount or fees, or any deductions whatever."

*Term policies* were taken for *seven* years, at the price of six annual premiums.

Nothing is said as to *reinstatement*, though this provision is to be found in earlier American policies.

Nor is anything said about the right to *cancel* by either party.

*Policy fee*, twenty-five cents!

All *sums in excess of \$10,000 paid an extra premium.*  
(443, 488.)

461. From this time until the great fire of New York, A. D. 1835, but slight changes were made in the form or conditions of the policy.

FROM 1835 TO 1860.

462. From A. D. 1835 until about A. D. 1860, the following form was generally adopted by the New York city companies, and printed forms in blank for transfers of the policy, and the consent of the company thereto, are here first found.

The matter under head of "*Proposals for Insurance*," to be found upon all the earlier policies, is omitted.

The *classification of hazards* (482), increased to *seven* classes in 1814, is here further extended, and classified as *not hazardous*, *hazardous*, and *extra hazardous*, with a *special memorandum*, including the specially hazardous of the present day.

463. The form of policy becomes much more systematic and precise, and embraces several new features, viz. :

*Duration* of the risk is limited to a certain specific time commencing and ending at an hour certain.

The *various classes of hazards*, as given upon the reverse of the policy, are referred to, and not enumerated in the body of the instrument, as heretofore.

The payment of the *premium* is made a condition precedent to the validity of the contract.

Property *held in trust*, and *goods on storage*, must be specifically insured.

*Cancellation*, at option of the company, is provided for in certain cases, but no option is given to the insured to cancel.

It is made the duty of the insured to use his best exertions to save property at fires, and *abandonment* is provided against.

*Notice* and *proof of loss* embrace the requirements of policies of the present day, with stipulations as to *books of account* and other vouchers; but nothing is said of the insured submitting to examination.

*Reinstatement* is fully provided for within *twenty* days after *proofs* have been furnished.

**464.** A policy of the "*Eagle Insurance Company*" of New Orleans, La., issued in 1836, has the conditions of the contract in two parallel columns—one in English, the other in French. Among these conditions are the following, viz. :—

ART. 11. For the further convenience of merchants who may have property in two or more distinct buildings, the same may be insured in one sum, with the customary average clause."

"ART. 13. In all cases of loss or damage on buildings insured by this company they reserve the right of replacing them in all respects as they were previous to the fire, and allowing the rent during the time that they may be so occupied in rebuilding or repairing, as the case may be. (1736.)

This is the first mention of the *average clause*, in connection with the fire policy, found in American policies. (1736.)

**465.** The *contribution clause* provides for a *ratable* proportion of the loss or damage, and not a *pro rata* based upon the insurance.


**466.** These conditions are placed in the middle of the body of the policy, all of the written description preceding, and the acknowledgment of liability, etc., with the subscription following, with seal.


The following is the form of New York city policy above referred to :

#### THE FIRE POLICY OF 1836.

**467.** And the said Company do hereby promise and agree to make good unto the said insured, ————— executors, administrators and assigns, all such loss or damage, not exceeding in amount the sum

insured, as shall happen by fire to the property as above specified, during \_\_\_\_\_ to wit, from the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_ (at 12 o'clock at noon) until the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_ (at 12 o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen; and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions annexed to this policy. PROVIDED ALWAYS, and it is hereby declared, that this Corporation shall not be liable to make good any loss or damage by fire, which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power. AND PROVIDED FURTHER, that in case the insured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this Corporation, and mentioned in or indorsed upon this Policy, then this insurance shall be void and of no effect. AND, if the said insured, or \_\_\_\_\_ assigns shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this Corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this Policy shall cease and be of no further effect. AND in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this Policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this Policy, *any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.* AND IT IS AGREED AND DECLARED to be the true intent and meaning of the parties hereto, that in case the above-mentioned \_\_\_\_\_ (building or premises) \_\_\_\_\_ shall at any time after the making, and during the time this Policy would otherwise continue in force, be appropriated, applied, or used, to or for the purpose of carrying on, or exercising therein, any trade, business, or vocation, denominated *hazardous* or *extra hazardous*, or specified in the memorandum of special rates in the terms and conditions annexed to this Policy, or for the purpose of either keeping or storing therein any of the articles, goods, or merchandise, in the same terms and conditions denominated *hazardous* or *extra hazardous* or included in the memorandum of special rates, except as herein specially provided for, or hereafter agreed to by this Corporation, in writing, to be added to or endorsed upon this policy, then, and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease, and be of no force or effect. AND IT IS MOREOVER DECLARED that this insurance is not intended to apply to or cover any books of accounts, written securities, deeds or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion. And that this Policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for.

 THIS INSURANCE (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefor is paid, and endorsed on this Policy, or a receipt given for the same.

 The interest of the insured in this Policy is not assignable, unless by the consent of this Corporation, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this Policy shall from thenceforth be void and of no effect.

**In Witness whereof, THE \_\_\_\_\_ FIRE INSURANCE COMPANY** have caused these presents to be signed by their President, and attested by their Secretary, in the city of New York, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_.

#### 468. CONDITIONS OF INSURANCE.

I. APPLICATIONS for insurance on Property out of the city of New York must be in writing, and specify the construction and materials of the building to be insured, or containing the property to be insured; by whom occupied; whether as a private dwelling, or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; and whether any manufactory is carried on within or about it; and in relation to the insurance of goods and merchandise the application must state whether or not they are of the description denominated *hazardous, extra hazardous, or included in the memorandum of special rates.*

If any person insuring any building or goods in this office shall make any misrepresentation or concealment; or if after insurance effected, either by the original policy or by the renewal thereof, the risk shall be increased by any means whatsoever within the control of the assured, or if such buildings or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void and of no effect.

If, during the insurance, the risk be increased by the erection of buildings or by the use or occupation of neighboring premises, or otherwise, or if for any other cause the company shall so elect, it shall be optional with the company to terminate the insurance, after notice given to the assured, or his representative, of their intention to do so; in which case the company will refund a rateable proportion of the premium.

II. No insurance, whether original or continued, shall be considered as binding, until the actual payment of the premium.

III. Property held in trust, or on commission, must be insured as such, otherwise the policy will not cover such property; and, in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interest therein. *Goods on storage must be separately and specifically insured.*

IV. The interest of the insured in this policy is assignable, provided the consent of the company be first obtained to the transfer; notice of such assignment shall be given before any loss may have happened; and this com-

panty, when so notified, may elect either to continue the insurance, and express the same by endorsement on this policy, or refund a rateable proportion of the premium, for the time of the risk unexpired, and cancel the policy.

V. Notice of all previous insurances, upon property insured by this company shall be given to them, and endorsed on this policy, or otherwise acknowledged by the company in writing, at or before the time of their making insurance thereon; otherwise the policy subscribed by this company shall be of no effect. And in case of subsequent insurances on property insured by this company, notice thereof must also, with all reasonable diligence, be given to them; to the end that such subsequent insurance may be endorsed on the policy subscribed by this company or otherwise acknowledged in writing; in default whereof, such policy shall thenceforth cease and be of no effect. *And in all cases of insurance this company shall be liable for such rateable proportion of the loss or damage happening to the subject insured, as the amount insured by this company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.*

VI. In case of fire, or of loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property. And it is mutually understood that there can be no abandonment to the insurers of the subject insured.

This company will be liable for losses on property burnt by lightning, but not for any loss or damage by fire, happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power.

VII. Books of account, written securities, or evidences of debt, title deeds, writings, money, or bullion, are not deemed objects of insurance.

VIII. Jewels, plate, medals, platings, statuary, sculptures and curiosities, are not deemed to be included in any insurance, unless specified in the policy.

IX. Persons sustaining loss or damage by fire shall forthwith give notice thereof in writing to the company. And as soon after as possible they shall deliver as particular an account of their loss and damage, as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just; showing, also, whether any and what other insurances have been made on the same property; what was the whole cash value of the subject insured; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also produce a certificate under the hand and seal of a magistrate or notary public, most contiguous to the place of fire, and not concerned in the loss, stating that he has examined the circumstances attending the fire, loss or damage alleged; and that he is acquainted with the character and circumstance of the insured or claimant; and that he verily believes that he, she, or they have, by mis-

fortune, and without fraud or evil practice, sustained loss and damage on the subject insured to the amount which the magistrate or notary public shall certify. And until such proofs, declarations, and certificates are produced, the loss shall not be payable.

And whenever required in writing, the insured or person claiming shall produce and exhibit his books of account and other vouchers, to the insurers or their agent, in support of his claim, and permit extracts and copies thereof to be made.

All fraud and false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurer on the policy.

And in case differences shall arise, touching any loss or damage, it shall be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing shall be binding on the parties.

X. In case of any loss on, or damage to the property insured, it shall be optional with the company to replace the article lost or damaged, with others of the same kind and equal goodness; and to rebuild or to repair the building or buildings within a reasonable time; giving notice of their intention so to do, within twenty days after having received the preliminary proofs of loss required by the ninth article of these conditions.

XI. Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved, without any deduction whatever.

XII. Insurances once made may be continued for such further time as may be agreed on, the premium required therefor being paid and endorsed on the policy, or a receipt given for the same; and all insurances, original or renewed, shall be considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings.

**469.** Up to A. D. 1850-60, the form of policy changed but slightly among the New York city companies. About 1860 the following was added to the body of the policy, preceding the subscription, viz. :—

**469.** WHENEVER gunpowder, or any other article, subject to legal restrictions, shall be kept in said premises, in quantities greater than the law allows, or in a manner different from that prescribed by law, unless said use or keeping is specially provided for herein, this policy shall be null and void.

**470.** If steam power be used in or about said premises, and the boiler burst, or if any property hereby insured be struck by lightning, or damaged by explosion from any cause whatever, this company shall not be liable unless fire ensues, and then for the loss by fire only.

**470.** And the conditions of insurance were revised as follows, viz. :—

I. If any person effecting insurance in this company shall make any

misrepresentation or concealment touching the risk to be assumed, or, if, during the existence of this policy, or any renewal thereof, the risk shall be increased by any means within the control of the assured; or by the occupation of the premises for more *hazardous* purposes than are permitted by this policy; or, if the assured, at or before the taking of any renewal, shall fail to notify the company, *in writing*, of any increase of the hazard, whether within or without the premises, this policy shall be void. Every renewal shall be deemed to be made on the faith of the representation on which the original policy was granted, unless superseded by a new description of the risk.

II. This insurance may be terminated at any time, at the request of the assured, in which case the company shall retain only the customary short rates for the time the policy has been in force. The insurance may also be at any time terminated at the option of the company, on giving notice to that effect, and refunding a ratable proportion of the premium for the unexpired term of the policy.

III. If the property to be insured be held in trust or on commission, or be a leasehold, or other interest not absolute, it must be so represented to the company, and expressed in the policy in writing; otherwise the insurance, as to such property, shall be void, and in case of loss the names of the respective owners shall be set forth in the preliminary proofs of such loss, with their respective interests therein.

IV. Goods held on storage must be separately and specifically insured.

V. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium.

VI. It is agreed that the person or persons, if any, other than the assured, who have procured this insurance to be taken by this company, shall be deemed to be the agent or agents *of the assured*, and *not of this company*, in any transactions relating to this insurance.

VII. If, at the happening of any fire, the assured shall have insurance under a *floating* policy or policies, not specific, but covering goods generally, in various places not designated, and yet within limits which include the premises or property herein insured, such policy, as between the assured and this company, shall be considered as covering any excess of sound value of the subject insured beyond the amount covered by the specific insurance thereon; and to determine the amount for which this company is liable in case of loss, such floating policy shall be considered an insurance on the property to the extent of such excess.

VIII. In case of fire, or exposure to loss or damage thereby, the insured shall use their best endeavors to save and protect the property, and the company shall not be liable for any loss sustained in consequence of neglect to do so; and it is mutually understood that there can be no abandonment to the insurers of the subject insured.

IX. Persons sustaining loss or damage by fire shall forthwith give notice thereof in writing to the company, and as soon after as possible they shall deliver as particular an account of the loss and damage as the nature of the

case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just; showing, also, the ownership of the property insured; what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; in what manner the building insured, or containing the subject insured, and the several parts thereof, were occupied at the time of the loss; who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also produce a certificate under the hand and seal of a magistrate, or notary public, most contiguous to the place of the fire, and not concerned in the loss, stating that he has examined the circumstances attending the fire, loss or damage alleged; that he is acquainted with the character and circumstances of the claimant, and that he verily believes that such claimant has, by misfortune, and without fraud or evil practice, sustained loss and damage to the subject insured to the amount which such magistrate or notary shall certify.

When merchandise or other personal property is *partially damaged*, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit; assorting and arranging the various articles according to their kinds; separating the damaged from the undamaged; and shall cause an inventory to be made and furnished to the company, of the whole, naming the quantity and cost of each. The amount of sound value and of damage shall then be ascertained by the examination and appraisal of each article by disinterested appraisers, mutually agreed upon.

Whenever required, in writing, the insured or person claiming, shall exhibit his books of account, and other vouchers, to the insurers, or their agent, at the office of this company, and permit copies thereof to be made, and shall also exhibit to any persons named by the company, and shall permit to be examined by them any property damaged on which loss is claimed, or any property saved which was insured by this policy; and until such proofs, declarations, and certificates are produced, and such appraisals and examinations of property and accounts permitted by the claimant, the loss shall not be payable.

In case of claim for loss or damage on a policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the assured in conformity with the conditions of this policy in like manner as if no assignment had been made; otherwise this policy shall be void.

The cash value of the property destroyed or damaged by fire shall be deemed to be such as it may cost at the time of the fire to replace the same.

X. In case of any loss or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged with others of the same kind and quality, or to take the goods at their appraised value, or to rebuild or repair the building or buildings within a reasonable time; giving notice of their intention to do so within thirty days after having received the preliminary proofs of loss required by these conditions.

XI. In case differences shall arise concerning the amount of any loss or

damage, the matter, at the written request of either party, shall be submitted to the judgment of disinterested arbitrators, mutually chosen, whose award shall be binding on the parties as to such amount, but such award shall not decide the liability of this company under this policy.

XII. All fraud or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claim on this company under this policy.

471. It will be noted that quite an advance was made in the present conditions of insurance in several particulars.

*Cancellation* by either party is provided for.

Property on *commission*, or *held in trust* or *leaseholds*, must be so stated in the policy, and, in case of loss, the names of the respective owners must be given.

The matter of payment of premiums to brokers is provided against, and such are made agents of the insured.

472. The *contribution clause* is omitted entirely, and Sec. VII. is inserted, meaning to make the policy a *floater* when in contact with other floating policies; but by the wording of the clause it makes *all other* floating policies excess policies, but not itself (RULE V., 2133). This was about the time that the *Albany Rule* came into vogue, and this clause doubtless was framed to meet that rule. (2125.)

473. In case of *partial damage* to property, the insured is bound to put the same in as good order as the case will admit, and make an inventory of the same for use of the company.

*Examination under oath* is made obligatory upon the insured, at the option of the company.

In case of *assignment of the policy only*, the insured must make the proofs required.

*Arbitrators* are restricted to the *amount* of loss, and not as to the liability of the company.

*Fraud* and *false swearing* are provided against.

The CLASSES of *hazard* were slightly extended and made more complete.

474. This form of policy remained in force until the issuing of the *National Board Form*, A. D. 1867, which took the place of most others throughout the country among the leading companies, except, perhaps, in Massachusetts, where the old Boston form had been retained pretty generally by the companies of that state.

## NATIONAL BOARD FORM OF POLICY.

**475.** The original form or draft of this policy was adopted in June, 1867. It was revised and slightly improved in 1868, and adopted by the Board.

In submitting this form to fire underwriters for adoption, the Committee of the "NATIONAL BOARD OF FIRE UNDERWRITERS" say of it:—

"The 'form' recommended is that in almost universal use, and has the merit of being also in the form of a legal contract. While the great benefit accruing to both companies and their dealers, from uniformity of policies, cannot be questioned, the prevention of *disputes after losses have occurred*, and the full protection afforded, must of themselves be the best commendation that can be offered in favor of a uniform policy."

The object expected to be realized, from uniformity in policies, was the prevention of misunderstandings and clashing heretofore so common under a variety of forms and conditions; and had the forms recommended by the committee, and accepted by the Board, been accepted and used by the companies, this end would have been attained. But, unfortunately, few offices accepted the form as submitted; each made some alterations by addition or qualification, so that, while in the main they are uniform, yet in some particulars they vary almost as much as before, and frequently come into serious collision in cases of adjustment of the same loss.

The *National Board form* as here given will be made the basis of the proposed "legal dissection," and such departures from the original instrument as may be important will be noted.

**476.** The FORM is as follows: The figures in *brackets (1650)* in the margin refer to the sections and paragraphs, where the several stipulations are treated *in extenso*. The marginal notes will serve as an Index to the subjects.

DO INSURE (1652). And said ——— Insurance Company hereby agrees to make good unto the said assured ——— executors, administrators and assigns, all such *immediate loss or damage* not exceeding in amount the sums insured as above specified, nor the interest of the assured in the property, except as herein provided, as shall happen by FIRE to the property so specified from the ——— day of ——— one thousand eight hundred and ——— at twelve o'clock noon, to the ——— day of ——— one thousand eight hundred and ——— at twelve o'clock noon; the amount of loss or damage to be estimated according to the

Indemnity (1650).

Date (847).

Limit of Liability (1454).	ACTUAL CASH VALUE of the property at the time of the loss,
To be paid (5063).	and TO BE PAID sixty days after due notice and proofs of the same shall have been made by the assured, and received at this office in accordance with the terms and provisions of this policy, unless the property be replaced, or the company shall have given notice of their intention to REBUILD or REPAIR the damaged premises.
Reinstatement (1455).	
Application and survey (500).	1. If an APPLICATION, SURVEY, <i>plan</i> or <i>description</i> of the property herein insured is referred to in this policy, such
Warranty (510).	<i>application, survey, plan</i> or <i>description</i> shall be considered a part of this contract, and a warranty by the assured;
Misrepresentation (507).	And any FALSE REPRESENTATION by the assured of the condition, situation or occupancy of the property, or any omission to make known every fact <i>material</i> to the risk, or any over-valuation, or any MISREPRESENTATION whatever, either in a written application or otherwise;
Concealment (605).	Or, if the assured shall have, or shall hereafter make any OTHER INSURANCE on the property hereby insured, or any part thereof, without the consent of the company written hereon;
Other insurance (068).	Or if the above-mentioned premises shall be occupied or used so as to INCREASE the risk, or become vacant and unoccupied, and so remain for more than thirty days without notice to and consent of this company in writing;
Change of occupancy—Vacant (1117, 1145).	Or the risk be increased by the erection or occupation of neighboring buildings, or by any means whatever within the control of the assured, without the assent of this Company indorsed hereon;
Increase of hazard (1110).	Or if it be a manufacturing establishment <i>running in whole or in part over or extra time, or running at night</i> or if it shall cease to be operated, without special agreement indorsed in this Policy;
Extra hours.	Or if the property be SOLD or TRANSFERRED, or any change take place in title, or possession, whether by legal process or judicial decree, or voluntary transfer, or conveyance;
Alienation (1085).	Or if this property shall be ASSIGNED before a loss without the consent of the Company indorsed hereon;
Assignment (1080).	Or if the INTEREST of the assured in property, whether as owner, trustee, consignee, factor, agent, mortgagee, lessee, or otherwise, be not truly stated in this Policy.
Insurable interest (853).	Or if the assured shall KEEP <i>gunpowder, fireworks, nitro-glycerine, phosphorus, saltpetre, nitrate of soda, petroleum, naphtha, gasoline, benzine, benzole or benzine varnish, or</i> KEEP OR USE <i>camphene, spirit gas, or any burning fluid or chemical oils</i> , without written permission in this policy; then, and in every such case, this policy shall be void.
Prohibited articles (1139).	2. This insurance does NOT apply to or COVER <i>jewels, plate, watches, musical or scientific instruments (pianofortes in dwellings excepted), ornaments, medals, patterns, printed music, printed books, engravings, paintings, picture-frames, sculpture, casts, models or curiosities</i> , unless particularly specified in this policy.
Memorandum articles (803).	This company shall not be liable by virtue of this policy, or any renewal thereof, until the PREMIUM therefor be actually paid;
Premium (775).	<i>Not for loss by theft at or after a fire;</i>
Theft (778).	<i>Not for money or bullion, bills, notes, accounts, deeds, evidences of debt, or securities of property of any kind;</i>
Exceptional risks (837).	<i>Not for any loss or damage by fire caused by means of an</i>
Invasion, riot, usurped power, &c. (1674).	INVASION, INSURRECTION, RIOT, CIVIL COMMOTION, or MILITARY OR USURPED POWER;

Nor for any loss in buildings *unprovided with good and substantial stone or brick chimneys*; Chimneys (839).

Nor in consequence of any neglect or deviation from the Police laws or regulations of police where such exist; Police laws (845).

Nor for any loss caused by the EXPLOSION OF GUNPOWDER, camphene, or any explosive substance; nor by LIGHTNING, or explosions of any kind, unless fire ensues, and then for the loss or damage by fire only, which loss shall be determined by the value of the damaged property after the casualty by explosion or lightning. Explosions from any cause (1688, 1689).

(Add to all Policies issued on property out of the city of New York, the following addition to section 2):

"When property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers, in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant."

Removal of property in case of fire (1680).

3. If a building shall FALL, except as the result of a fire, all insurance by this company on it or its contents shall immediately cease and determine. Fallen building (1672).

4. If the INTEREST of the assured in the property be any other than the entire, unconditional and sole ownership of the property for the use and benefit of the assured; Insurable interest (853).

Or if the building insured stands on LEASED GROUND, it must be so represented to the company and so expressed in the written part of this policy, otherwise the policy shall be void. Leased ground (217).

When property has been SOLD and DELIVERED, or otherwise disposed of, so that all interest or liability on the part of the assured herein named has ceased, this insurance on such property shall immediately terminate. Property sold and delivered (1205).

GOODS HELD ON STORAGE must be separately and specifically insured. Goods on storage (1131).

5. If during this insurance the above-mentioned premises shall be used for any trade, business or vocation, or for STORING, USING or VENDING therein any of the articles, goods or merchandise denominated hazardous, or extra hazardous, or specially hazardous in the second class of hazards printed on the back of this policy; Storing or keeping hazardous extra hazardous or specially hazardous goods (1131).

Or if the occupation of such premises be changed from one of the class denominated extra hazardous or specially hazardous to that of another of the same class, except as herein specially agreed to in writing upon this policy; then and from thenceforth, so long as the same shall be so appropriated, applied or used, this policy shall cease and be of no force or effect. Change of occupancy must be noted (1117).

Suspension of risk (1110).

6. The best endeavors of the assured shall be used in SAVING and PROTECTING the property from damage at and after the fire; and in case of failure so to do, this company will not be liable for damage caused by such failure; Saving Property at fire (1573).

And there can be no ABANDONMENT to the company of the property insured. Abandonment (1171).

The use of general terms, or anything less than a distinct, specific agreement, clearly expressed, and indorsed in this policy, shall not be construed as a WAIVER of any printed or written condition or restriction therein. Non-waiver (1131).

7. In case of any other insurance upon the property hereby insured, whether made prior or subsequent to the date of this policy, the assured shall be entitled to recover of this com- Contribution clause pro rata with other insurances (1091).

pany no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon; and it is hereby declared and agreed that in case of the assured holding any other policy in this or any other company on the property insured, subject to the conditions of average, this policy shall be subject to the average in like manner.

**Reinsurance** (1016). *Re-insurance*, in case of loss, to be settled in proportion as the sum re-insured shall bear to the whole sum covered by the re-insured company.

**Cancellation** (886). 8. This insurance may be *terminated at any time at the* request of the assured, in which case the company shall

**Short rate** (915). retain only the *customary short rates* for the time the policy has been in force. The insurance may also be *terminated* at any time at the option of the company, on giving notice to that effect, and refunding a *ratable* proportion of the premium for the unexpired term of the policy.

**Notice of loss** (1071, 1029). 9. Persons sustaining **LOSS** or **DAMAGE** by fire shall forthwith give notice of said loss to the company, and as soon thereafter as possible *render a particular account* of such

**Preliminary proofs** (1862). loss, signed and sworn to by them, stating whether any and what *other insurance* has been made on the same property,

**Other insurance** (1892). giving copies of the written portion of **ALL policies** thereon, also the *actual cash value* of the property and their *interest*

**Value** (1897). therein, for what purpose and by whom the *building* insured

**Interest** (1911). or containing the property insured, and the several parts thereof, *were used* at the time of the loss, when and *how* the

**Use and occupancy** (1912). *fire originated*;

**Origin of fire** (1581). And shall also produce a **CERTIFICATE** under the hand and seal of a **MAGISTRATE**, or a **Notary Public** (*nearest* to the place of the fire, not concerned in the loss as a *creditor* or otherwise, nor *related* to the assured), stating that he has examined the circumstances attending the loss, knows the *character* and *circumstances* of the assured, and verily believes that the assured has, without fraud, *sustained loss* on the property insured to the *amount* which such **Magistrate** or **Notary Public** shall certify.

**Magistrate's certificate** (1914). The assured shall, if required, submit to an **EXAMINATION** under oath (1955) or **EXAMINATIONS** under oath by any person appointed by the company, and subscribe to such examinations when

**Examination under oath** (1955). reduced to writing, and shall also produce *their* **BOOKS** of **ACCOUNT** and other **VOUCHERS**, and exhibit the same for examination at the office of the company, and permit extracts and copies thereof to be made; the assured shall also produce *certified copies* of *all bills* and *invoices*, the originals of which have been lost, and shall exhibit all that remains

**Books of account as evidence** (1951). of the property which was covered by this policy, damaged or not damaged, for examination to any person or persons named by the company.

**Salvage** (1729). (9a). When **PERSONAL PROPERTY** is damaged, the assured shall forthwith cause it to be put in order, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged, and shall cause an inventory to be made, and furnished to the company, of the whole, naming the quantity, quality and cost of each article. The amount of sound value and of damage shall then be ascertained by an appraisal of each article by competent persons (not interested in the loss as creditors or otherwise, nor related to the insured or sufferers), to be mutually appointed by the insured and the company; their

**Care of property after fire** (1573).

**Appraisal** (17831 803).

report, in writing, to be made under oath before any magistrate or other properly commissioned person; one half of the appraiser's fees to be paid by the assured.

The company reserves the right to take the whole or any part of the articles at their appraised value; and until such proofs, declarations, and certificates are produced, and examinations and appraisals permitted by the claimant, the loss shall not be payable.

(96). In case of loss on property held in trust, or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth, together with their respective interests therein.

If this policy is made payable in case of loss to a third party, or held as collateral security, the proofs of loss shall be made by the party originally insured, unless there has been an actual sale of the property insured.

All FRAUD, or ATTEMPT AT FRAUD, by false swearing or otherwise, shall cause a forfeiture of all claims on this company under this policy.

But provided, in case differences shall arise touching any loss or damage, after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial ARBITRATORS, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy.

And provided further, that it shall be optional with the company to REPAIR, REBUILD, or REPLACE the property lost or damaged, with other of like kind and quality, within a reasonable time, giving notice of their intention to do so within thirty days after receipt of proofs herein required; and in case this company elect to rebuild, the assured shall if required, furnish plans and specifications of the buildings destroyed.

The CASH VALUE of property destroyed or damaged by fire shall in no case exceed what would be the cost to the assured, at the time of the fire, of replacing the same; and in case of the DEPRECIATION of such property from use or otherwise, a suitable deduction from the cash cost of replacing shall be made, to ascertain the actual cash value.

10. This insurance (the risk not being changed) may be continued for such further time as shall be agreed on, provided the premium therefor is paid and endorsed on this policy, or a receipt given for the same, and it shall be considered as continued under the original representation, and for the original amounts and divisions, unless otherwise provided in writing; but in case there shall have been any change in the risk, either within itself or by neighboring buildings, not made known to the company by the assured at the time of renewal, this policy and renewal shall be void.

11. It is a part of this contract, that any person other than the assured, who may have procured this insurance to be taken by this company, shall be deemed to be the agent of the assured named in this policy, and not of this company under any circumstances whatever, or in any transaction relating to this insurance.

12. It is furthermore hereby expressly provided and mutually agreed, that no suit or action against this company for the recovery of any claim by virtue of this policy, shall

Co. may take articles at appraised value (1808).

Payment of loss (1062).

Property in trust or on commission (1197).

Payment to a third party (1873, 1972).

Fraud (585).  
False swearing (596).

Arbitration (1810).

Reinstatement or rebuilding (1835).

Measure of damage (1090).

Depreciation (1740).

Renewal (874).

Void in case of change of risk. (1117).

Agent of the insured (792, 1333).

Limitation of action (1172, 1173).

be sustainable in any court of law, or chancery, until after an award shall have been obtained, fixing the amount of such claim in the manner above provided, nor unless such suit or action shall be commenced within twelve months next after the loss shall occur; and should any suit or action be commenced against this company after the expiration of the aforesaid twelve months, the lapse of time shall be taken and deemed as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

Gas Machines  
(804).

*Gas.*—The generating or evaporating within the building or contiguous thereto of any substance for a burning gas, or the use of gasoline for lighting, is prohibited under this policy, unless permitted in writing hereon.

Fixtures, etc.  
(805).

*Fences and other Yard fixtures, also Store furniture and fixtures,* are not insured under the within policy, unless separately and specifically mentioned.

Builders' Risks  
(835).

*Builders' Risk.*—The working of carpenters, roofers, tin-smiths, gasfitters, plumbers or other mechanics, in building, altering or repairing the premises named in this policy, will vitiate the same, unless permission for such work be endorsed in writing hereon, except in dwelling houses only, where five days are allowed in any one year for incidental repairs, without notice or endorsement.

Acceptance of the  
policy.

AND IT IS HEREBY UNDERSTOOD AND AGREED by and between this company and the assured, that the policy is made and accepted in reference to the foregoing terms and conditions, and to the classes of hazards and memoranda printed on the back of this policy, which are hereby declared to be a part of this contract, and are to be used and resorted to in order to determine the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for in writing.

Subscription.  
(166).

IN WITNESS WHEREOF, \_\_\_\_\_ have caused these presents to be signed by their President, and attested by their Secretary, or other officer in the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

Date of subscrip-  
tion (865).

\_\_\_\_\_  
President.

\_\_\_\_\_  
Secretary.

Where the policy is to be valid only after being countersigned by a duly authorized agent of the company, the following form of subscription is used:—

IN WITNESS WHEREOF, the \_\_\_\_\_ Insurance Company of the city of \_\_\_\_\_ have caused these presents to be signed by their President, and attested by their Secretary, in the city of \_\_\_\_\_, not to be valid, however, until countersigned by the duly authorized agent of the company at \_\_\_\_\_, (166.)

\_\_\_\_\_  
President.

\_\_\_\_\_  
Secretary.

Countersigned at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

\_\_\_\_\_  
Agent.

In some forms of the agency policy, the following is used:—

"Not to be valid until countersigned by (John Jones) the duly authorized agent of the company at (Schencksville, Pa.)."

The objection to this form is that *each policy* becomes a power of attorney in the hands of the party therein designated as agent, and might, under certain circumstances, be productive of trouble where a change of agent might be desirable.

## STANDARD FORMS

### OF THE FIRE INSURANCE POLICY.

**477.** In July, 1867, the Legislature of the State of Connecticut directed the Insurance Commissioner of that State to prepare a series of "uniform conditions" for the fire policy, to be used in that jurisdiction. But when ready for promulgation the form met with such determined opposition from the underwriters at Hartford and in New York, that the Act was repealed at the succeeding session of the Legislature. A copy of these "Uniform Conditions" can be found in vol. xxxi., Currie's United States Magazine, p. 70.

In 1873, the Legislature of Massachusetts passed an Act, "to establish a standard form for insurance policies." And under chapter 175 of the statute of 1880, those of 1873 were amended, and what is now known as the *Massachusetts Standard Policy* was made obligatory upon all fire companies operating in that State as follows :—

**478.** CHAPTER 175.—An act in addition to an act to establish a standard form for insurance policies.

Be it enacted by the senate and house of representatives in General Court assembled, and by the authority of the same, as follows :—

SECTION 1. No fire insurance company authorized to issue policies in this Commonwealth shall issue any policy containing any condition or conditions that the company shall not be liable beyond the whole or any fractional portion of the actual value of the property insured, at the time of the loss or damage, unless said condition or conditions are separately printed in long primer type, Roman or old style face, at the head of the policy, and also in the same type in the body of the policy; and no such company, excepting mutual companies, except as provided in section two of this Act, shall issue any policy in which the printed parts, exclusive of the description of the property insured, vary from the Massachusetts standard policy, set forth in the acts of the year eighteen hundred and seventy-three, chapter three hundred and thirty one, excepting that every such company may issue policies in which any of the provisions of the said policy are printed and erased; and excepting, also, that every such company may insert any provisions varying from the provisions of the said standard policy, provided such provisions are printed upon separate slips or riders, in type of size not smaller than long primer, and are accepted by the insured; and that every such slip or rider is signed by him as well as by an agent or officer of such company duly authorized thereto.

SECTION 2. The provisions of the preceding section shall not prevent any company authorized to insure against damage by lightning from adding in the clause in said standard policy enumerating the perils insured against, the words "also any damage by lightning, whether fire ensues or not," and also from adding in the clause of said policy, providing for an apportionment of loss in case of other insurance, the words "whether by fire, lightning, or both."

SECTION 3. This act shall take effect upon the first day of January, in the year eighteen hundred and eighty-one.

Approved April 7, 1880.

The form of the policy as sent out by the State authorities is as follows :

#### 479. MASSACHUSETTS STANDARD POLICY.

STOCK COMPANY.—CASH CAPITAL, \$3,000,000.

No. \_\_\_\_\_

\$ \_\_\_\_\_

THE

INSURANCE COMPANY

OF THE CITY OF \_\_\_\_\_

This company shall not be liable beyond the actual value of the insured property at the time any loss or damage happens.

Premium. In consideration of \_\_\_\_\_ Dollars,  
To them paid by the insured, hereinafter named, the  
receipt whereof is hereby acknowledged, do insure  
\_\_\_\_\_ against loss or damage by fire  
Amount insured to the amount of \_\_\_\_\_ Dollars.  
Property insured. \_\_\_\_\_

Sum Insured.	Property covered by	Bills of exchange, notes, accounts, evidences, and securities of property of every kind, books, wearing apparel, plate, money, jewels, medals, patterns, models, scientific cabinets and collections, paintings, sculpture, and curiosities are not included in said insured property, unless specially mentioned.
\$ _____	Policy.	
Time,	Term.	Said property is insured for the term of _____ beginning on the _____ day of _____ in the year one thousand eight hundred and _____, at noon, and continuing until the _____ day of _____ in the year one thousand eight hundred and _____, at noon, against
Rate,		
Premium,		
\$ _____	Perils insured against.	all loss or damage by FIRE, originating from any cause except invasion, foreign enemies, civil commotions, riots, or any military or usurped power whatever; the amount of said loss or damage to be estimated according to the actual value of the insured property at the

time when such loss or damage happens, but not to include loss or damage caused by explosions of any kind unless fire ensues, and then to include that caused by fire only.

**Matters avoiding Policy.** This policy shall be void if any material fact or circumstance stated in writing has not been fairly represented by the insured,—or if the insured now has or shall hereafter make any other insurance on the said property without the assent in writing or in print of the Company,—or if, without such assent, the said property shall be removed, except that if such removal shall be necessary for the preservation of the property from fire, this policy shall be valid without such assent for five days thereafter,—or if without such assent, the situation or circumstances affecting the risk shall, by or with the knowledge, advice, agency or consent of the insured, be so altered as to cause an increase of such risks, or if, without such assent, the said property shall be sold, or this policy assigned, or if the premises hereby insured shall become vacant by the removal of the owner or occupant, and so remain vacant for more than thirty days without such assent, or if it be a manufacturing establishment running in whole or part extra time, except that such establishment may run in whole or in part extra hours not later than nine o'clock P. M., or if such establishment shall cease operation for more than thirty days without permission in writing indorsed hereon, or if the insured shall make any attempt to defraud the Company, either before or after the loss,—or if gunpowder or other articles subject to legal restriction shall be kept in quantities or manner different from those allowed or prescribed by law,—or if camphene, benzine, naphtha, or other chemical oils or burning fluids shall be kept or used by the insured on the premises insured, except that what is known as refined petroleum, kerosene, or coal-oil, may be used for lighting.

**Assured to protect property in case of exposure to fire.** If the insured property shall be exposed to loss or damage by fire, the insured shall make all reasonable exertions to save and protect the same.

**Statement by insured in case of loss.** In case of any loss or damage under this policy, a STATEMENT in writing, signed and sworn to by the insured, shall be forthwith rendered to the Company, setting forth the value of the property insured, the interest of the insured therein, all other insurance thereon, in detail, the purposes for which and the persons by whom the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured. The Company may also examine the books of account and vouchers of the insured, and make extracts from the same.

**Payment of loss to be made within sixty days after proof, unless provided in the preceding clause, shall either pay the amount for which it shall be liable, or replace the property with other of the same kind and goodness,—or it may, within fifteen days after such statement is submitted, notify the insured of its**

intention to rebuild or repair the premises, or any portion thereof separately insured by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property

insured to the Company, and that the Company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.

**Apportionment of loss in case of other insurance.** If there shall be any OTHER INSURANCE on the property insured, whether prior or subsequent, the insured shall recover on this policy no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured

**Insured to assign to Company claims against third parties.** thereon. And whenever the Company shall pay any loss, the insured shall assign to it, to the extent of the amount so paid, all rights to recover satisfaction for the loss or damage from any person, town, or other corporation, excepting other insurers; or the insured, if requested, shall prosecute therefor at the charge and for the account of the Company.

**Rights of parties in case the Policy is made payable to a mortgagee.** If this policy shall be made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee or his agents, or those claiming under him, shall affect such mortgagee's right to recover in case of loss on such real estate; *provided*, that the mortgagee shall, on demand, pay according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this Company shall be liable to the mortgagee for any sum for loss under this policy, for which no liability exists as to the mortgagor, or owner, and this Company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the Companies interested, upon such payment, the said mortgage, together with the note and debt thereby secured.

**Cancellation of Policy.** This Policy may be CANCELLED at any time at the request of the insured, who shall thereupon be entitled to a return of the portion of the above premium remaining, after deducting the customary monthly short rates for the time this policy shall have been in force. The Company also reserves the right, after giving written notice to the insured, and to any mortgagee to whom this policy is made payable, and tendering to the insured a ratable proportion of the premium, to cancel this policy as to all risks subsequent to the expiration of ten days from such notice, and no mortgagee shall then have the right to recover as to such risks.

**Differences to be submitted to referees.** In case any difference of opinion shall arise as to the amount of loss under this policy, it is mutually agreed that the said loss shall be referred to three disinterested men, the Company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen, provided that neither party shall be required to choose or accept any person who has served as a referee in any like case within four months; and the decision of a majority of said referees in writing shall be final and binding on the parties.

No suit or action against this Company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this Commonwealth unless commenced within two years from the time the loss occurred.

In Witness Whereof, the said \_\_\_\_\_ INSURANCE COMPANY has caused this Policy to be signed by its President, and attested by its Secretary, at its office, in the City of \_\_\_\_\_. But this Policy shall not be valid until countersigned by the duly authorized Agent of the Company at \_\_\_\_\_.

\_\_\_\_\_  
President.

\_\_\_\_\_  
Secretary.

#### ENDORSEMENTS.

This Policy is not assignable for purposes of collateral security; but for such purpose, it is to be endorsed "loss, if any, payable," etc., such endorsement being on its face. In cases of actual sale and transfer of title, leave having been previously obtained, the form subjoined may be used, which must be executed at the time of said transfer.

**The \_\_\_\_\_ Insurance Company** hereby consents that the interest of \_\_\_\_\_ in the within Policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to \_\_\_\_\_

\_\_\_\_\_ 18

\_\_\_\_\_  
*Agent.*

**For Value Received,** \_\_\_\_\_ hereby transfer, assign and set over unto \_\_\_\_\_ and \_\_\_\_\_ assigns, all \_\_\_\_\_ title and interest in this Policy, and all advantages to be derived therefrom.

WITNESS \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 18  
*Sealed and delivered in presence of*

\_\_\_\_\_  
(L. S.)

**The \_\_\_\_\_ Insurance Company** hereby consents that the interest of \_\_\_\_\_ in the within Policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to \_\_\_\_\_

\_\_\_\_\_ 18

\_\_\_\_\_  
*Agent.*

**For Value Received,** \_\_\_\_\_ hereby transfer, assign and set over unto \_\_\_\_\_ and \_\_\_\_\_ assigns, all \_\_\_\_\_ title and interest in this Policy, and all advantages to be derived therefrom.

WITNESS \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 18

*Sealed and delivered in presence of*

\_\_\_\_\_  
L. S.)

## NEW YORK STANDARD POLICY FORM.

**480.** The bill under which the New York Standard Policy form was enacted provides :

**SECTION. 1.** The Superintendent of the Insurance Department shall prepare and file in the office of the Secretary of State, on or before the 15th day of October, 1886, a form in blank of a contract or policy of fire insurance, together with such provisions, agreements and conditions as may be indorsed thereon or added thereto, and form a part of such contract or policy.

**SEC. 2.** On and after the 15th day of January, 1887, no fire insurance company, corporation or association, their officers, brokers, agents, solicitors or employees, shall make, issue, use or deliver for use fire insurance policies on property in this State, other than such as shall conform in all particulars as to context, provisions, agreements and conditions with the form of contract or policy filed in the office of the Secretary of State, as provided for in the first section of this act ; and no other or different provision, agreement, condition or clause shall in any manner be made a part of said contract or policy, or be indorsed thereon or delivered therewith, except as follows, to wit :

1. The name of the company, its location and its place of business, the date of its incorporation, the amount of its paid-up capital stock, the names of its incorporators, the names of its officers and agents, the number and date of the policy, and if it be issued through an agent, the words "This policy shall not be valid until countersigned by the duly authorized agent at —" may be printed on policies issued on property in this State.

2. Printed or written forms of description and specification or schedules of the property insured may be attached or appended, as a slip or rider only, to any policy issued on property in this State.

3. A company organized or incorporated under and in pursuance of the laws of this State or elsewhere, if entitled to do business in this State, may, with the approval of the Superintendent of the Insurance Department, if the same is not already included in the form filed in the office of the Secretary of State, print in its policies any provisions which it is by law required to insert therein, if such provision is not in conflict with the laws of this State; but said provision shall be printed apart from the other provisions, agreements or conditions of the policy with a separate title as follows : "Provisions required by law to be stated in the policy," but no provision which modifies the contract of insurance in such a way as to affect the question of loss shall be printed under such title, and if so printed shall be of no effect.

4. A company insuring against damage by lightning may print in the policy, in addition to the provisions, conditions and agreements in the form filed in the office of the Secretary of State, under the title of "perils by lightning," the following : "This company will also pay to the assured any loss or damage by lightning whether fire ensues or not."

5. A company may write upon the margin or across the face of a policy provisions adding to or modifying those contained in the form herein provided for, but such provisions must be subscribed to or signed by the officers or agents of the company making such addition.

SEC. 3. Any insurance company, its officers, brokers, agents, solicitors or employees, or either of them, violating any provision of this act by making, issuing, delivering, or offering to deliver, any policy of fire insurance on property in this State, except as hereinbefore provided, shall be guilty of a misdemeanor, and upon complaint made by the Superintendent of the Insurance Department, or by any citizen of this State, shall upon conviction thereof be punished by a fine of not less than \$25 nor more than \$100 for the first offence, and of not less than \$100 nor more than \$250 for each subsequent offence; but any policy so made, issued and delivered, shall, notwithstanding, be binding upon the company issuing the same.

SEC. 4. This act shall take effect immediately.

### STANDARD FIRE INSURANCE POLICY

OF THE STATE OF NEW YORK, 1886.

**480a.** The — INSURANCE COMPANY of —, in consideration of the stipulations herein, and of — dollars premium, does insure — for the term of — from the — day of —, 18—, at noon, to the — day of —, 18—, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding — dollars, to the following described property, while located and contained as described herein and not elsewhere, to wit: —

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of the loss have been received by this company, in accordance with the terms of this policy. It shall be optional, however, with this company to take all or any part of the articles at such ascertained or appraised value, and also to repair, rebuild or replace the property lost or damaged with other of like kind and quality, within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof herein required; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the

property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment, and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within-described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee-simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of the property by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance, except change of occupants without increase of hazard, whether by legal process or judgment, or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building, or adjacent thereto for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine, or other explosives, phosphorus, or petroleum, or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn, and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building, herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosions of any kind or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as a result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes or securities, nor, unless liability is

specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools or property held on storage or for repairs; nor beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes or otherwise; nor for any greater proportion of the value of plate glass, frescoes and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan or description of property be referred to in this policy, it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal, or this policy shall be void.

This policy shall be cancelled at any time at the request of the insured or by the company, by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice, it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee, or of any person or corporation having an interest in the subject of insurance, other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, any part of this policy not required to cover property remaining in the original location or not exhausted by loss shall, for five days only, cover the property so removed in the proportion that the value of the property in each place bears to the total value, but not to exceed a greater proportion than the amount hereby insured shall bear to the total insurance whether the same contribute or not.

If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article, and the amount claimed thereon; and within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss

thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property, and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy; by whom and for what purpose any building therein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured), living nearest the place of fire, stating that he has examined the circumstances, and believes the insured has honestly sustained loss to the amount, that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as required shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof, if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss, the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property or for loss by and expense of removal from premises endangered by fire than the amount thereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on

payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations applicable to its organization, membership or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may, in accordance with law, be written or printed upon, attached or appended hereto.

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements or conditions as may be indorsed hereon or added hereto, and no officer, agent or other representative of this company shall have power to waive any provision or condition of this policy, except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto; and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

In witness whereof this company has executed and attested these presents this — day of — 18—.

#### RIDERS.

**481.** Or additional clauses to cover special conditions referred to, but not included in the body of the policy.

##### 1. *Application and Survey Clause.*

This policy is based upon an application and survey of the property on file, which is hereby referred to as forming part of this policy.

##### 2. *Percentage Value Clause.*

If at the time of fire the whole amount of insurance on the property covered by this policy shall exceed.....per cent. of the actual cash value thereof, this company, in case of loss or damage, shall not be liable to pay more than its *pro rata* share of said.....per cent. of the actual cash value of such property; and should the whole insurance at the time of fire exceed the said per cent., a *pro rata* return of premium on such excess of insurance from the time of the fire to the expiration of this policy shall be made on surrender of the policy.

3. *Percentage Value Clause—For Application to Specific Items of Policy.*

If at the time of fire the whole amount of insurance on the property covered by the.....item.....of this policy on.....shall exceed.....per cent. of the actual cash value thereof, this company, in case of loss or damage, shall not be liable to pay more than its *pro rata* share of said.....per cent. of the actual cash value of such property; and should the whole insurance on said item.....at the time of fire, exceed the said per cent., a *pro rata* return of premium on such excess of insurance from the time of the fire to the expiration of this policy shall be made on surrender of the policy.

4. *Co-Insurance Clause.*

If at the time of fire the whole amount of insurance on the property covered by this policy shall be less than the actual cash value thereof, this company shall, in case of loss or damage, be liable for such portion only of the loss or damage as the amount insured by this policy shall bear to the actual cash value of such property.

5. *Percentage Co-insurance Clause.*

If, at the time of fire, the whole amount of insurance on the property covered by this policy shall be less than....per cent. of the actual cash value thereof, this company shall, in case of loss or damage, be liable for only such portion of such loss or damage as the amount insured by this policy shall bear to the said.....per cent. of the actual cash value of such property.

6. *Co-Insurance Clause—For Application to Specific Items of Policy.*

If at the time of fire the whole amount of insurance on the property covered by the.....item.....of this policy on....., shall be less than the actual cash value thereof, this company shall, in case of loss or damage, be liable for only such portion of such loss or damage as the amount insured under said item.....shall bear to the actual cash value of property covered by such item.

7. *Percentage Co-Insurance and Limitation Clause.*

If at the time of fire the whole amount of insurance on the property covered by this policy shall be less than.....per cent. of the actual cash value thereof, this company shall, in case of loss or damage, be liable for such portion only of the loss or damage, as the amount insured by this policy shall bear to the said.....per cent. of the actual cash value of such property; *provided*, that in case the whole insurance shall exceed.....per cent. of the actual cash value of the property covered by this policy, this company shall not be liable to pay more than its *pro rata* share of said.....per cent. of the actual cash value of such property; and should the whole insurance at the time of fire exceed the said per cent., a *pro rata* return of premium on such excess of insurance, from the time of the fire to the expiration of this policy, shall be made on surrender of the policy.

8. *Percentage Co-Insurance Clause—For Application to Specific Items of Policy.*

If at the time of fire the whole amount of insurance on the property covered by the.....item.....of this policy on....., shall be less than .....per cent. of the actual cash value thereof, this company shall, in case of loss or damage, be liable for only such portion of such loss or damage as the amount insured under said item.....shall bear to the said.....per cent. of the actual cash value of the property covered by such item.

9. *Percentage Co-Insurance and Limitation Clause—For Application to Specific Items of Policy.*

If at the time of fire the whole amount of insurance on the property covered by the.....item.....of this policy on....., shall be less than .....per cent. of the actual cash value thereof, this company shall, in case of loss or damage, be liable for only such portion of such loss or damage as the amount insured under said item.....shall bear to the said.....per cent. of the actual cash value of property covered by such item; *provided*, that in case the whole insurance on the property covered by said item..... shall exceed.....per cent. of the actual cash value of the same, this company shall not, on said item....., be liable to pay more than its *pro rata* share of said.....per cent. of the actual cash value of such property; and should the whole insurance on said item....., at the time of the fire, exceed the said.....per cent., a *pro rata* return of premium on such excess of insurance, from the time of the fire to the expiration of this policy, shall be made on surrender of the policy.

10. *Co-Insurance Clause for Floating Policy.*

It is hereby declared and agreed that in case the property aforesaid in all the buildings, places, or limits included in this insurance, shall at the breaking out of any fire or fires, be collectively of greater value than the sum insured, then this company shall pay and make good such a portion only of the loss or damage as the sum insured shall bear to the whole value of the property aforesaid, at the time when such fire or fires shall first happen.

But it is at the same time declared and agreed, that if any specific parcel of goods included in the items of this policy, or such goods in any specified building or buildings, place or places, within the limits of this insurance, shall at the time of any fire be insured in this or any other office, this policy shall not extend to cover the same, excepting only so far as relates to any excess of value beyond the amount of such specific insurance or insurances, and shall not be liable for any loss, unless the amount of such loss shall exceed the amount of such specific insurance or insurances, which said excess only is declared to be under the protection of this policy and subject to average as aforesaid.

It being the true intent and meaning of this agreement that this company shall not be liable for any loss, unless the amount of such loss shall exceed the amount of the specific insurance or insurances, and then only for such excess, which said excess shall be subject to average as above.

#### 11. Mortgagee Clause.

Loss or Damage, if any, under this policy, shall be payable to.....as mortgagee [or trustee] as interest may appear, and this insurance, as to the interest of the mortgagee [or trustee] only therein, shall not be invalidated by any act of neglect of the mortgagor or owner of the within-described property, nor by any foreclosure or other proceeding or notice of sale relating to property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; *provided*, that in case the mortgagee or owner shall neglect to pay any premium due under this policy, the mortgagee [or trustee] shall, on demand, pay the same.

*Provided*, also, that the mortgagee [or trustee] shall notify this company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee [or trustee], and, unless permitted by this policy, it should be noted thereon, and the mortgagee [or trustee] shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This company reserves the right to cancel this policy at any time as provided by its terms; but in such case this policy shall continue in force for the benefit only of the mortgagee [or trustee] for ten days after notice to the mortgagee [or trustee] of such cancellation, and shall then cease, and this company shall have the right on like notice to cancel this agreement.

Whenever this company shall pay the mortgagee [or trustee] any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee [or trustee] the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee [or trustee] to recover the full amount of.....claim

#### 12. Condition as to Incumbrances.

If the property, real or personal, covered by this policy be or become incumbered by a mortgage, trust deed, judgment or otherwise, this entire policy shall be void, unless otherwise provided by agreement indorsed hereon or added hereto.

#### 13. Mortgage Clause—when Owner has no Interest in the Insurance

It is hereby specially understood and agreed, that this policy is for the bene-

fit of the mortgagee [or trustee] only, the owner having no interest whatever therein.

And it is further agreed, that whenever this company shall pay the mortgagee any sum for loss under this policy, this company shall at once be legally subrogated to all the rights of the mortgagee [or trustee], under all the securities held as collateral to the mortgage debt to the extent of such payment; but such subrogation shall not impair the right of the mortgagee [or trustee] to recover the full amount of his claim.

#### 14. *Mortgage Clause with Full Contribution.*

Loss or damage, if any, under this policy, shall be payable to.....as .....mortgagee [or trustee], as interest may appear, and this insurance, as to the interest of the mortgagee [or trustee] only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within-described property, nor by any foreclosure or other proceedings, or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; *provided*, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee [or trustee] shall, on demand, pay the same.

*Provided*, also, that the mortgagee [or trustee] shall notify this company of any change of ownership or occupancy, or increase of hazard which shall come to the knowledge of said mortgagee [or trustee]; and, unless permitted by this policy, it shall be noted thereon, and the mortgagee [or trustee] shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This company reserves the right to cancel this policy at any time as provided by its terms; but in such case this policy shall continue in force for the benefit only of the mortgagee [or trustee], for ten days after notice to the mortgagee [or trustee] of such cancellation, and shall then cease, and this company shall have the right, on like notice, to cancel this agreement.

In case of any other insurance upon the within-described property, this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property, issued to or held by any party or parties having an insurable interest therein, whether as owner, mortgagee, or otherwise.

Whenever this company shall pay the mortgagee [or trustee] any sum for loss or damage, under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt; or may, at its option, pay to the mortgagee [or trustee] the whole principal due, or to grow due on the mortgage with interest, and shall, thereupon, receive a full assignment and transfer of the mortgage, and of all such other securities; but no subrogation shall impair the right of the mortgagee [or trustee] to recover the full amount of.....claim.

15. *Lightning Clause.*

This policy shall cover any direct loss or damage caused by lightning (meaning thereby the commonly accepted use of the term lightning, and in no case to include loss or damage by cyclone, tornado, or wind-storm) not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy. Provided, however, if there shall be any other insurance on said property, this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning, whether such other insurance be against direct loss by lightning or not.

16. *Assessment, Instalment, or Credit Clause.*

If any assessment or instalment, or any part of the premium for which credit is given, be not paid when due, the whole premium shall be considered earned and be immediately payable, and this policy shall be void so long as any part of such premium remains unpaid.

## STATUTORY CONDITIONS, ONTARIO.

482. An Act to secure Uniform Conditions in Policies of Fire Insurance (*chap. 162, Rev. Stat. Ohio*).

Short Title 1. This Act may be cited as "*The Fire Insurance Policy Act*."

2. Where, by reason of necessity, accident or mistake, the conditions of any contract of fire insurance on property in this Province, as to the proof to be given to the Insurance Company after the occurrence of a fire, have not been strictly complied with; or where, after a statement or proof of loss has been given in good faith by or on behalf of the insured, in pursuance of any proviso or condition of such contract, the Company, through its agent or otherwise, objects to the loss upon other grounds than for imperfect compliance with such conditions, or does not, within a reasonable time after receiving such statement or proof, notify the assured in writing that such statement or proof is objected to, and what are the particulars in which the same is alleged to be defective, and so from time to time; or, where for any other reason, the Court or Judge, before whom a question relating to insurance is tried or inquired into, considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions—no objection to the sufficiency of such statement or proof or amended or supplemental statement or proof (as the case may be) shall, in any of such cases, be allowed as a discharge of the liability of the Company on such contract of insurance wherever entered into; but this section shall not apply where the fire has taken place before the twenty-first day of December, 1874. 38 V., c. 65, s. 1.

3. The conditions set forth in the Schedule to this Act shall, as against the insurers, be deemed to be part of every policy of fire insurance hereafter entered into or renewed or otherwise, in force in Ontario with respect to any property therein, and shall be printed on every such policy with the heading "*Statutory conditions*." 39 V., c. 24, s. 1, *part*.

If due proof of loss not given through accident, &c., or objection not made thereto, or made on other grounds than non-compliance with conditions.

or, if full compliance adjudged inequitable,

in above cases, liability and policy not vacated.

Statutory conditions to be part of every policy unless varied.

4. If a Company (or other insurer) desires to vary the said Variations, conditions, or to omit any of them, or to add new conditions, <sup>how indicated.</sup> there shall be added in conspicuous type, and in ink of different color, words to the following effect:—

VARIATIONS IN CONDITIONS.

483. "This policy is issued on the above statutory conditions, with the following variations and additions:

"These variations (*or as the case may be*) are, by virtue of the Ontario Statute in that behalf, in force so far as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the Company."

5. No such variation, addition or omission shall, unless the Variations not same is distinctly indicated and set forth in the manner or to binding unless the effect aforesaid, be legal and binding on the insured; and <sup>clearly indicated.</sup> no question shall be considered as to whether any such omission is, under the circumstances

Page 245, § 483-7. Note:—

These cases, Citizens Insurance Company, and Queen Insurance Company, were carried to the Privy Council, Nov. 26, 1881, where their Lordships of the Judicial Committee overruled the first named, and partly overruled the second upon the ground that an "interim note" was not a policy under the Act; but left the question open as to whether the quantity of gunpowder allowed to be kept, 10 pounds, under the Company's conditions (while the Statutory Conditions allowed 25 pounds) was "just and reasonable," for the Court of Queen's Bench, with direction that "the rule be disposed of according to the decision that may be come to upon it."

The decisions of the Privy Council Committee in the above cases can be found, at length, in the Ontario Insurance Report, 1881, p. 65, *et seq.*

that "Companies that have not complied with the law relative to Statutory conditions, and printed them in their policies, cannot set up against the insured their own conditions or the statutory conditions. The insured alone, in such cases, is entitled to avail himself of any statutory condition.

SCHEDULE.

(Sections 3 and 6.)

484. STATUTORY CONDITIONS.

1. If any person or persons insures his or their buildings or <sup>Misrepresentation or</sup> goods, and causes the same to be described otherwise than as <sup>tation or</sup> they really are, to the prejudice of the Company, or misrepresentation or omission. <sup>omission.</sup> sends or omits to communicate any circumstance which is material to be made known to the Company, in order to enable it to judge of the risk it undertakes, such insurance shall be of no force in respect to the property in regard to which the misrepresentation or omission is made.

15. *Lightning Clause.*

This policy shall cover any direct loss or damage caused by lightning (meaning thereby the commonly accepted use of the term lightning, and in no case to include loss or damage by cyclone, tornado, or wind-storm) not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy. Provided, however, if there shall be any other insurance on said property, this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning, whether such other insurance be against direct loss by lightning or not.

16. *Assessment, Instalment, or Credit Clause.*

If any assessment or instalment, or any part of the premium for which credit is given, be not paid when due, the whole premium shall be considered earned and be immediately payable, and this policy shall be void so long as

or, if full  
consideration  
adjudged  
insurable,

in above cases  
insurable and  
policy not  
vacated

Statutory con-  
ditions to be  
part of every  
policy unless  
varied

ment or proof, duly the insured in writing that such statement or proof is objected to, and what are the particulars in which the same is alleged to be defective, and so from time to time; or, where for any other reason, the Court or Judge, before whom a question relating to insurance is tried or inquired into, considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions—no objection to the sufficiency of such statement or proof or amended or supplemental statement or proof (as the case may be) shall, in any of such cases, be allowed as a discharge of the liability of the Company on such contract of insurance wherever entered into; but this section shall not apply where the fire has taken place before the twenty-first day of December, 1871. 35 V., c. 65, s. 1.

3. The conditions set forth in the Schedule to this Act shall, as against the insurers, be deemed to be part of every policy of fire insurance hereafter entered into or renewed or otherwise, in force in Ontario with respect to any property therein, and shall be printed on every such policy with the heading "*Statutory conditions.*" 39 V., c. 24, s. 1, *part*.

4. If a Company (or other insurer) desires to vary the said conditions, or to omit any of them, or to add new conditions, there shall be added in conspicuous type, and in ink of different color, words to the following effect:—

VARIATIONS IN CONDITIONS.

483. "This policy is issued on the above statutory conditions, with the following variations and additions:

"These variations (or as the case may be) are, by virtue of the Ontario Statute in that behalf, in force so far as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the Company."

5. No such variation, addition or omission shall, unless the same is distinctly indicated and set forth in the manner or to the effect aforesaid, be legal and binding on the insured; and no question shall be considered as to whether any such variation, addition or omission is, under the circumstances, just and reasonable, but, on the contrary, the policy shall, as against the insurers, be subject to the statutory conditions only, unless the variations, additions or omissions are distinctly indicated and set forth in the manner or to the effect aforesaid. 39 V., c. 24, s. 2.

6. In case any policy is entered into or renewed, containing or including any condition other than or different from the conditions set forth in the Schedule to this Act, if the said condition so contained or included is held, by the Court or Judge before whom a question relating thereto is tried, to be not just and reasonable, such condition shall be null and void. 38 V., c. 65, s. 2; 39 V., c. 7, s. 2, *Sched. B*; 39 V., c. 24, s. 1, *part*; 40 V., c. 7, *Sched. A* (148).

7. A decision of a Court or Judge under this Act shall be Appeal subject to review or appeal to the same extent as a decision by such Court or Judge in other cases. 38 V., c. 65, s. 4; 39 V., c. 24, s. 3.

NOTE.—By the Supreme Court of Canada in the cases of the Citizens and Queen Ins. Cos. v. Parsons (S. C. R. 215), it was held that "Companies that have not complied with the law relative to Statutory conditions, and printed them in their policies, cannot set up against the insured their own conditions or the statutory conditions. The insured alone, in such cases, is entitled to avail himself of any statutory condition."

SCHEDULE.

(Sections 3 and 6.)

484. STATUTORY CONDITIONS.

1. If any person or persons insures his or their buildings or goods, and causes the same to be described otherwise than as they really are, to the prejudice of the Company, or misrepresents or omits to communicate any circumstance which is material to be made known to the Company, in order to enable it to judge of the risk it undertakes, such insurance shall be of no force in respect to the property in regard to which the misrepresentation or omission is made.

- Policy sent to be deemed as applied for unless variance pointed out. 2. After application for insurance, it shall be deemed that any policy sent to the assured is intended to be in accordance with the terms of the application, unless the Company points out, in writing, the particulars wherein the policy differs from the application.
- When a change as to risk shall avoid a policy. Notice of change, &c. 3. Any change material to the risk, and within the control or knowledge of the assured, shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the Company or its local agent; and the Company when so notified may return the premium for the unexpired period, and cancel the policy, or may demand in writing an additional premium, which the insured shall, if he desires the continuance of the policy, forthwith pay to the Company; and if he neglects to make such payment forthwith after receiving such demand, the policy shall be no longer in force.
- Change of property. 4. If the property insured is assigned without a written permission endorsed hereon by an agent of the Company duly authorized for such purpose, the policy shall thereby become void; but this condition does not apply to change of title by succession, or by the operation of the law, or by reason of death.
- Partial damage—salvage. 5. Where property insured is only partially damaged, no abandonment of the same will be allowed unless by the consent of the Company or its agent; and in case of the removal of property to escape conflagration, the Company will ratably contribute to the loss and expenses attending such act of salvage.
- Money Securities, &c. 6. Money, books of account, securities for money, and evidences of debt or title are not insured.
- Plate, paintings, clocks, &c. 7. Plate, plated ware, jewellery, medals, paintings, sculptures, curiosities, scientific and musical instruments, bullion, works of art, articles of *vertu*, frescoes, clocks, watches, trinkets, plate glass, and mirrors, are not insured unless mentioned in the policy.
- Prior or subsequent insurance. 8. The Company is not liable for loss if there is any prior insurance in any other Company, unless the Company's assent thereto appears herein or is endorsed hereon, nor if any subsequent insurance is effected in any other Company, unless and until the Company assents thereto by writing signed by a duly authorized agent.
- Case of assent to other insurance. 9. In the event of any other insurance on the property herein described having been assented to as aforesaid, then this Company shall, if such other insurance remains in force, on the happening of any loss or damage, only be liable for the payment of a rateable proportion of such loss or damage, without reference to the dates of the different policies.
- Liability in cases of non-ownership. 10. The Company is not liable for the losses following, that is to say:—  
(a) For loss of property owned by any other party than the assured, unless the interest of the assured is stated in or upon the policy;  
(b) For loss caused by invasion, insurrection, riot, civil commotion, military or usurped power;
- Riot, invasion, &c.

(c) Where the insurance is upon buildings—for loss caused by the want of good and substantial brick or stone chimneys; or by ashes or embers being deposited, with the knowledge and consent of the insured, in wooden vessels; or by stoves or stove pipes being, to the knowledge of the assured, in an unsafe condition, or improperly secured; Chimneys,  
ashes, stoves.

(d) For loss or damage to goods destroyed or damaged while undergoing any process, in or by which the application of fire heat is necessary; Goods to which  
fire heat is  
being applied.

(e) For loss or damage occurring to buildings or their contents while the buildings are being repaired by carpenters, joiners, plasterers or other workmen and in consequence thereof, unless permission to execute such repairs has been previously granted in writing, signed by a duly authorized agent of the Company. But in dwelling-houses, fifteen days are allowed in each year for incidental repairs, without such permission; Repairs by  
carpenters, &c.

(f) For loss or damage occurring while petroleum, rock, earth or coal oil, camphene, burning fluid, benzine, naphtha, or any liquid products thereof, or any of their constituent parts (refined coal oil for lighting purposes only, not exceeding five gallons in quantity, excepted), or more than twenty-five pounds weight of gunpowder, are stored or kept in the building insured or containing the property insured, unless permission is given in writing by the Company. Gunpowder,  
coal oil, &c.

11. The Company will make good loss caused by the explosion of coal gas in a building not forming part of gas works, and loss by fire caused by any other explosion or by lightning. Explosion.  
Lightning.

12. Proof of loss must be made by the assured, although the loss be payable to a third party. Proof of loss  
when payable  
to other than  
assured.

13. Any person entitled to make a claim under this policy is to observe the following directions: Directions to  
be observed on  
making claim.

(a) He is forthwith after loss to give notice in writing to the Company;

(b) He is to deliver, as soon afterwards as practicable, as particular an account of the loss as the nature of the case permits;

(c) He is also to furnish therewith a statutory declaration declaring:

- (1) That the said account is just and true;
- (2) When and how the fire originated, so far as the declarant knows or believes;
- (3) That the fire was not caused through his willful act or neglect, procurement, means or contrivance; and
- (4) The amount of other insurances;

(d) He is, in support of his claim, if required and if practicable, to produce books of account and furnish invoices and other vouchers; to furnish copies of the written portion of all policies; and to exhibit for examination all that remains of the property which was covered by the policy.

(c) He is to produce, if required, a certificate under the hand of a magistrate, notary public, or clergyman residing in the vicinity in which the fire happened, and not concerned in the loss or related to the assured or sufferers, stating that he has examined the circumstances attending the fire, loss or damage alleged, that he is acquainted with the character and circumstances of the assured or claimant, and that he verily believes that the insured has by misfortune and without fraud or evil practice sustained loss and damage on the subject insured, to the amount certified.

Proof of loss may be made by agent.

14. The above proofs of loss may be made by the agent of the assured, in case of the absence or inability of the assured himself to make the same, such absence or inability being satisfactorily accounted for.

False statement or fraud vitiates claim.

15. Any fraud or false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim.

Arbitration in case of differences.

16. If any difference arises as to the value of the property insured, of the property saved, or amount of the loss, such value and amount, and the proportion thereof (if any), to be paid by the Company, shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then to two persons, one to be chosen by the party insured and the other by the Company, and a third to be appointed by the persons so chosen; and such reference shall be subject to the provisions of "The Common Law Procedure Act;" and the award shall, if the Company is in other respects liable, be conclusive as to the amount of the loss and proportion to be paid by the Company.

Loss due thirty days after proof.

17. The loss shall not be payable until thirty days after completion of the proofs of loss, unless otherwise provided by statute or the agreement of the parties.

Company may reinstate, instead of paying.

18. The Company, instead of making payment, may repair, rebuild or replace, within a reasonable time, the property damaged or lost, giving notice of their intention within fifteen days after receipt of the proofs herein required.

Termination of policy on notice and repayment of proportions of premiums.

19. The insurance may be terminated by the Company at any time, by giving ten days' notice to that effect, and by repaying a rateable proportion of the premium for the unexpired term; and the policy shall cease after the expiration of ten days from the receipt of such notice and repayment.

Waiver of condition.

20. No condition of the policy, either in whole or in part, shall be deemed to have been waived by the Company, unless the waiver is clearly expressed in writing, signed by an agent of the Company.

Officers assuming to agree in writing to be deemed agents.

21. Any officer or agent of the Company, who assumes on behalf of the Company to enter into any written agreement relating to any matter connected with the insurance, shall be deemed *prima facie* to be the agent of the Company for the purpose.

22. Every suit, action or proceeding against the Company <sup>Suits to be</sup> for the recovery of any claim, under or by virtue of this policy, <sup>brought with-</sup> shall be absolutely barred, unless commenced within the term <sup>in one year.</sup> of one year next after the loss or damage occurs. 39 V., c. 24, *Sched.*, 40 V., c. 7, *Sched.* A (148).

## CLASSES OF HAZARDS.

**485.** For ease of reference, and with a view to facilitate the fixing of rates, the various kinds of insurance risks, movable and fixed, have been grouped into classes under the several heads of non-hazardous, hazardous, extra hazardous and specially hazardous for merchandise and for manufacturing establishments, while buildings have been arranged into several corresponding classes, A, B, C, and D, intended to represent respectively their relative values one with another, as insurance risks, and thus afford an approximate idea of an appropriate rate.

**486.** The terms "not hazardous," "hazardous," "extra hazardous," and "specially hazardous" are now well-understood technical terms among fire underwriters, each having distinct, separate meanings, as applied to goods and to the various occupations and trades, although exactly what goods are included in each designation may not be so generally known and recognized as to dispense with actual proof; and to this end it was customary for many years, under the National Board form of policy of 1868, to enumerate the several classes of hazards, with their respective divisions and sub-divisions, upon the reverse of the policy, though in the more recent issues of policies, the Massachusetts and the New York "Standard" forms included, this lengthy classification is omitted, nor is any reference made thereto.

It was customary to refer to this classification, and make it a part of the policy, "to be used and resorted to in order to determine the rights of the parties hereto, in all cases not herein otherwise especially provided for in writing."

**487.** In the case of *Daniels v. Hudson River Fire Ins. Co.* (12 Cush. Mass. 417), the court held that:

"They are not to control or alter any express provision of the contract, or become parts of the policy; but they are statements in a collateral document which both parties agree to, as an authoritative exposition of what they both

understand as to the facts, in the presumptive truth of which they contract and the relations in which they stand to each other. They are not warranties, but are to be treated as representations."

**488.** These several *terms* are distinct and specific, and insurances upon goods "*hazardous*" will not include "goods *extra hazardous*" or "*specially hazardous*;" nor does the term "goods *extra hazardous*" cover goods "*specially hazardous*," (**1131 et seq.**) But when merchandise is covered as a "Class," it will include whatever is usually embraced in such "Class," whether extra hazardous or not. (*Reynolds v. Commercial F. I. Co., N. Y. C. A.*) 2 *Ins. Law Jour.* 63.

**489.** "*Extra hazardous*" and "*specially hazardous*" are not sub-divisions or classifications of goods under the general term "*hazardous*;" they are distinct classes of goods, and are so recognized and treated under the conditions of the policies.

**490.** When property is enumerated as "*hazardous*" or "*extra hazardous*," or otherwise specified as peculiarly exposed to risk, the rule that "*the expression of one thing excludes what is not expressed*" is applicable. (**1140.**) Thus: If the policy enumerate only "*goods hazardous and extra hazardous*," anything more *hazardous* would not be covered. Strict constructionists even holding that "*goods non-hazardous*" would not be included under such wording of the policy, its liability being confined solely to goods of the two classes distinctly named and described in the classification of hazards, as if such goods had been specified by name.

These several classes, in some form, seem to have been coeval with insurance itself, having been, like many other customs and practices, adopted with slight modifications from the marine branch; and they are now supposed to be arranged, as nearly as may be, according as their several characteristics and liability, or predisposition to combustion or ignition may be more or less remote, and are rated accordingly.

**491.** In the marine practice of early days the several classes were designated as—1, *least hazardous*; 2, *common hazardous*; 3, *more hazardous*; and 4, *most hazardous*, and under each head were embraced those subjects which, in the experience

of underwriters, seemed most appropriate to these several descriptions. Weskett, Ins. 105, 342, 478.

**492.** Following this, the earliest fire classification was that used by the *London Assurance* and *The Royal Exchange Assurance*, in the year 1720, where the several classes were designated respectively—"common assurances," "hazardous assurances," and "doubly hazardous assurances." Shaw's Ellis, Ins. 115; Angell, Ins. 55, n.

**493.** The first table of hazards used in the United States was that of the old *Mutual Fire Insurance Co.* of the city of New York in 1787. (**92.**) This was followed by that of the *Eagle Fire*, also of New York city, 1806.

From this time forward the Table of Classes was not materially altered until about 1836, after the great fire of 1835 in New York city, when the subjects under each head were much extended, and the *special memorandum* was added; and this so remained until about 1860, when the whole was again materially increased and subdivided, and so continued in use until the adoption of the Classes of the National Board form of policy (A. D. 1867), which have been much further extended, and embraced a very large number of sub-divisions, with which fire underwriters are now so familiar as to render further notice in this direction unnecessary, the more especially as the use of these clauses have about ceased.

**494.** It may not be amiss to say, in this connection, that it was for a time a custom among insurance companies to write their policies to cover "merchandise haz.," and "ex-haz.," or "non-haz.," or "specially haz.," as the case might be, without any other designation by which the property could be identified, so that by simply reading the policy, not the remotest idea could be obtained as to what kind of goods the policy was intended to cover, for the several Classes each contained a large variety of subjects, any or all of which were covered by the policy under this general designation, not only giving opportunity for misunderstandings between the insured and the company that might lead to the courts for settlement, but making it next to an impossibility to form a statistical classification of the business of the

company. This form was very appropriately termed "the lazy man's policy;" it may save time, but it tends to confusion, where clearness and precision are so greatly to be desired.

#### APPLICATION AND SURVEY.

**495.** *Condition of the Policy:* "If an application, survey, plan, or description of the property herein insured is referred to in this policy, such application, survey, plan, or description shall be considered a part of this contract and a warranty by the assured."

**496.** An application is the preliminary declaration made by the party applying for insurance, consisting of oral or written replies to inquiries, verbal or written, intended to cover all facts or circumstances material to the risks; subject, however, to the principle applicable to all contracts, that fraud by either party will exonerate the other from his obligation, if he so elects.

These statements are made before the issue of the policy, usually upon a printed form, called also "a survey," which is declared to be "a true plan and faithful description of the existing condition, as to exposure, occupancy, ownership, title, value, or other material matters connected with the subject of insurance," whether chattel or real property, by which the underwriter is enabled to judge of the nature and hazard of the risk, and fix thereto an appropriate rate of premium, and in so far an implied agreement that the facts declared shall continue throughout the currency of the policy; and as such representation (**514**) the application is made the basis of the contract; but it is only when the underwriter signifies to the applicant his acceptance of it, and not before, that the "minds of the parties meet," and the contract is consummated.

**497.** While the application, more or less in detail, was for many years prior required by insurers as a preliminary to an insurance, it was not until the adoption of the National Board form of policy in 1867 that the furnishing of an application, survey and description of the property was required by the stipulations above recited. (**495**.)

The general principles governing applications for insurance are briefly as follows:—

**498.** The application with its representations is a part of

the preliminary proceedings which propose the contract, while a warranty is the completed contract. The latter must be literally complied with; while the former, if complied with equitably and substantially, will be sufficient.

18 Ind. 352; 21 Conn. 19; 14 Barb. N. Y. 303; 6 McLean U. S. C. C. 324; 2 Ohio St. 452; 49 Me. 200; *Shannon vs. Gore* Dist. Mut., 37 U. C. Q. B. 380

**499.** To make an application a part of the contract, there must be an express stipulation that the policy was made and accepted in reference to such application.

7 Wend. N. Y. 72; 16 *id.* 482; 1 Clifford, C. C. U. S. 300; 43 N. Hamp. 176; *Shannon v. Hastings* Mut. F. I. Co., 25 U. C. C. P. 470.

**500.** Nor will a mere reference in the policy by way of recital, or otherwise, to a survey furnished by the insured, make the application a part of the policy, so as to require precise accuracy and conformity to the description as in a warranty.

2 Hall N. Y. 589, 632; 13 Wend. N. Y. 92; 8 Ben. Monroe, Ky. 634, 848; 2 Denio 75; 22 Conn. 235; 6 Wend. N. Y. 488.

**500a.** Nor does the mere indication in the policy of the place where an application, which should precede the execution of the policy, can be found on file make it, necessarily, a part of the policy. (19 Ind. 352.)

**501.** But where reference was made to "Survey No. — on file at the Office of — Insurance Company," and the policy contained the customary conditions of warranty as to the statements therein contained, it was held that "the survey referred to cannot be rejected and the residue of the policy upheld upon the ground that the plaintiff supposed that it was another and a different paper which had been filed in the — office, to which reference was made in the contract."

14 Barb. N. Y. 383; 30 N. Y. 136; 39 *id.* 90; 22 Conn. 235; 4 Ins. Law Jour. 875; *Grant v. Etna Ins. Co.*, 11 L. C. R. 128.

**502.** The representation of the insured to one office where the insurance is distributed may, by reference, be made equally binding on all other contracts issued thereon. A policy was issued by a company, based upon a survey of the premises forwarded to its offices, and an additional insurance was obtained in other companies, all referring to the survey on file in the office of the first company. The insured contended that he was

not bound to any company other than the first, as to the truthfulness or otherwise of that document. The Court held that his acceptance of the policy based on this survey obligated him as to its correctness in all. (2 Ins. Law Jour. 63; 4 *id.* 874; 11 L. C. R. 128.)

**503.** Where the policy was issued upon the survey of an agent of another company, and not upon the representation of the insured or her agent; it was held that "the Company was precluded from claiming any breach of warranty or fraudulent representation in the application upon which the policy was issued and accepted." Citing the case of *Rowley vs. Empire Ins. Co.*, 36 N. Y. 55; 3 Keyes, N. Y. 557; 2 Ins. Law Jour. 63; *Samo vs. Gore Dist. I. Co.*, 26 U. C. C. P. 405.

**503a.** The applicant must make true answers to inquiries made by the insurer respecting circumstances attending the risk. The fact that a question is asked makes it material to the risk. (10 Pick. Mass. 44; 4 R. I. 141; 1 Philips 281, § 542.)

**504.** When questions in a printed form of application are left *unanswered* by the applicant, and a policy is issued thereupon, it is a waiver on the part of the insurer of such answer. (4 R. I. 159; 37 N. H. 353; 7 Gray Mass. 261; 6 *id.* 185; May Ins. § 166; 91 Pa. Sta. 520; 9 Ins. Law Jour. 509.) But if a question be left unanswered, there is no warranty that there is nothing to answer. (7 Gray Mass. 271.)

**505.** If the answer to an interrogatory be in itself true, though the question be such as to suggest a fuller and more detailed reply, yet if the insurer be content with the partial answer, he cannot claim a warranty extending beyond such partial answer.

67 N. Y. 185; 69 *id.* 256; 65 Ind. 6; May Ins. § 200.

**506.** Where the answer to an interrogatory in the application is indefinite or *ambiguous*, and notwithstanding which the company issues the policy, it cannot subsequently set up a breach of warranty in such application. The company should in such cases demand more specific information upon the subject matter of the interrogatory before issuing the policy.

*Lebanon Mut. Ins. Co. v. Kepler*, Penn. Sup. Ct.; 24 Ohio St. 345; 12 Gray Mass. 545.

**507.** One who accepts a policy of insurance in which it is declared to be "made and accepted upon an application on file in the companies' office," is thereby precluded from denying that the application is his.

6 McLean, C. C. U. S. 324; 50 Pa. Sta. 331; 1 Ins. Law Jour. 20; 4 *id.* 874.

**508.** Written answers by the insured to written interrogatories (on printed forms) put by the underwriter, and referred to in the policy, are a part of the written contract, to the effect to which and for the purpose for which they are so referred to, whether as warranties or representations, or mere descriptions of the subject.

12 Cush. Mass. 416; 3 R. I. 157; 4 Ins. Law Jour. 97, 99; 17 Iowa 176; 50 Penn. Sta. 331.

**509.** Where a policy referred to the application for "a more full and particular description, and forming a part of the policy," and declared that "the policy was made and accepted in reference to the terms and conditions therein contained and thereunto annexed," which were declared to be a part of the contract; it was held that "by force of such reference, the application was made a part of the contract."

7 Wend. 72; 43 N. Hamp. 176; 37 Me. 127; 62 Barb. N. Y. 636; 1 Clifford, C. C. U. S. 300; *Reach v. Niag. Dist. F. Ins. Co.*, 21 U. C. C. P. 471; 2 Ohio St. 452.

**510.** When a policy refers to an application as a part of it, both are to be considered as one instrument (**176**), and a misstatement in the application, whether made intentionally or otherwise, as to a material fact, will void the policy. (35 Ohio St. 606.)

**511.** The fact that the insured was an illiterate German, who understood English but imperfectly, was immaterial because he was not obliged to sign the application unless he understood it; but having signed without asking to have it read to him, he was bound by it. (108 Pa. Sta. 594.)

**512.** Where an application for insurance was dated *after* the issuing of the policy, it was held that "the application had nothing to do with the policy whatever, although mentioned directly therein, as the policy was written and signed on the

*first*, while the application was not completed until the *ninth* of the month."

*Shaw & Rupert v. N. B. & Mer. Ins. Co., U. S. C. C., E. D. Md. 1877; 39 N. Y. 56; 6 Hand. O. 80; 17 Minn. 123; 13 Gray Mass. 492.*

**513.** The insured is responsible for the truth of his application, although signed by his own agent, *in blank*, and left to be filled up by the company, provided the company has not exceeded the implied authority conferred by sending the application in blank.

*40 N. Hamp. 333; 25 Barb. N. Y. 497; 7 Gray Mass. 261; 22 Ind. 108; Wash. U. S. C. C., Sept., 1886; 2 Duer Ins. 18; 5 Ins. Law Jour. 5, 26; 15 id. 98.*

For other authorities on the subject of applications, see *May Ins., § 120 et seq.*, and *3 Ins. Law. Jour., pp. 547-737.*

Applications, as regarded by the Courts, may be classed as REPRESENTATIONS AND WARRANTIES, and these again are affected by MISREPRESENTATION, CONCEALMENT and MATERIALITY.

#### REPRESENTATION.

**514.** A *representation*, in fire insurance, is the communication of a fact, or the making of a statement by one of the parties to the other, tending to influence his estimate of the character and degree of the risk to be insured against, and is to be construed according to the fair and obvious import of the words; and is equivalent, not only to an express statement of present facts, but also of all the inferences naturally, obviously, and necessarily arising from it. It may be an *oral* or *written* statement, or may be by mere implication; by the policy itself, by a separate writing, or by words spoken. But to be binding it must be *material*, and to discharge the underwriter must be *false*, wholly or partially, in *fact* or in the *event*.

*Civil Code L. C. § 2485; 14 Barb. N. Y. 383; 49 Me. 209; 7 U. C. Q. B. 119; 18 Ind. 352; 5 Vroom N. J. 244; 7 Nevada 174; 3 B. & S. 917; May Ins. 190 et seq.; 1 Philips Ins. 274 et seq.*

**515.** When the insured represents a fact without knowing it to be true, *he takes the risk of it upon himself.*

*29 Mich. 259; 27 Ind. 4; 103 Mass. 503; 12 Rush. Ky. 723; Dougl. 247, 260; Park Ins. 182.*

**516.** When a *representation* is qualified by the expression that the facts are such, "*to the best of his knowledge and belief,*"

if it turn out incorrect, it will not avoid the policy, unless fraudulently made; but such statement will be considered fraudulent, whether knowingly made contrary to the facts, or in ignorance of them, and without reasonable grounds for the belief. (545.)

6 Minn. 82; 50 Me. 580; Hopkins v. Prov. Ins. Co., 13 U. C. C. P. 81; 9 Ins. Law Jour. 222; 2 Gray Mass. 221. Per Contra, 97 Mass. 284.

**517.** REPRESENTATIONS are *affirmative* and *promissory*, as well as *material* and *immaterial*.

1 Arnould 578; 7 Wend. N. Y. 72; Angell Ins. 198; Garrett v. Prov. Ins. Co., 20 U. C. Q. B. 200; Hopkins v. Prov. Ins. Co., 18 U. C. C. P. 80.

**518. AFFIRMATIVE:** As that the fact is as represented at the time the statement is made. A positive *affirmative* representation of *material facts*, in respect to the future, is in effect a stipulation that they shall be substantially as stated, and that the non-fulfillment of such representations will defeat the policy if it occur prior to or simultaneously with the commencement of the risk, or be a ground of forfeiture if afterwards.

1 Philips Ins. 293, § 553; 9 Allen Mass. 546; 2 Duer. Ins. 657; 4 Pick. Mass. 430; Marsh. Ins. 450, v. 1, c. 10, § 1; 8 Metcf. Mass. 114.

**519. PROMISSORY:** As that it shall remain substantially so during the continuance of the risk, so far as may depend upon the insured. *Promissory* representations of material facts, so made and referred to in the policy, usually have the effect of express *warranties*, and come under that head; but in case of a written promissory representation, referred to in the policy as a *representation*, a substantial compliance will suffice.

"*Falsehood in the affirmation* prevents the contract from ever having any life; *breach of promise* could only bring it to a premature end."

2 Comst. N. Y. 210; 8 Metcf. Mass. 114; 1 Arnould Ins. 507, last par. of § 291; 9 Allen Mass. 240; 3 Kent Comm. 282.

**520.** Representations that certain material additions or changes and improvements shall be made, if precise and definite as to time and circumstance, are binding upon the insured; and the burden of proving compliance with such representation lies with the insured, and the burden of proving a breach thereof is not with the insurer. They are positive engagements that certain *material facts* shall or will exist; and unless facts take

place, substantially corresponding with those specified, the insurer will not be liable under the policy.

2 Comst. N.Y. 210; 5 Gray Mass. 471, and authorities *supra*.

**521.** A representation is *MATERIAL*, when there is an affirmation or denial of some fact, or an allegation which plainly leads the mind to an inference of a fact. (644.)

**522.** It is a first principle in the law of insurance that, on all occasions where a representation is *material*, it must be complied with; and when a *positive* representation relates to a future fact, which is *material*, it is just as binding as a warranty, although not, in all cases, as strictly construed.

1 Benn. F. L. Cases 598-600; 1 Arnould Ins. 584; May Ins. 190; 2 Comstock 210; 6 Duer N. Y. 587; 1 Philips Ins. 275.

**523.** An *IMMATERIAL* representation is one having no such tendency. The facts as to *materiality* or *immateriality* of a representation are for the jury.

**524.** Though it is not requisite that a *representation* should be in writing, it is usually so made, or it is reduced to writing by consent of the parties at the time of being made. Mr. Philips (vol. 1, 282) says:—

“It is for the mutual benefit of the parties that it should be in writing, as it induces caution and deliberation, and saves parties from forgetfulness, and mistakes of witnesses and errors of brokers and clerks.”

**525.** *Representations* usually form no part of the policy, but are simply collateral to the contract and invalidate it only upon the ground of fraud; that is, it must be false, as well as *material* to the risk. Yet a written *representation* may be referred to in the policy in such a manner, or may be of such a matter as to require as strict a conformity of the facts to the statement, and compliance, as if it were an express, specific warranty in the policy.

1 Arnould Ins. 425, 495; 1 Duer Ins. 33; 1 Philips Ins. 280, 368; Park Ins. 205; 2 Ins. Law Jour. 810; 25 U. C. C. P. 365; *id.* 372

**526.** *Representations* must be substantially complied with, however, in all cases, and, to this extent, are conditions precedent; but an exact and literal compliance is not necessary to recover, as in a warranty. They admit of variations and modifications, and do not invalidate the policy unless *materially* wrong

and the risk is greater than represented, or fraud is evident. If false, however, in material facts, whether through ignorance or design, the policy is void.

8 Metc. Mass. 114; 14 Barb. N.Y. 388; 13 La Ann. 246; 1 Story C. C. U. S. 57; 1 Bell. 598, 600; 1 Benn. F. I. Cases 598; 1 Philips 365, § 689; C. C. L. C. § 2489.

**527.** A statement of an *expectation, opinion, or belief*, is not a representation, and will not affect the contract, though the fact proves otherwise, if the statement be honestly made.

48 Me. 558; 29 Conn. 10; 1 Philips 306; Angell Ins. 199.

**528.** The applicant need represent to the insurer only such facts as relate to and are material to the risk; nor is he required to make representations of any circumstance which is provided for by the express stipulations of the policy. (C. C. L. C. § 2486.

**529.** In cases of *ambiguity or doubt*, the courts hold so much of the application as is not specifically declared to be a warranty to be a *representation* only, and as far as possible such stipulations are taken out of the category of warranties and some less stringent term applied to them.

24 Ohio St. 345; 12 Gray Mass. 545; 1 Philips Ins. 302, § 568.

**530.** Where a *representation* is ambiguous and obscure, the construction will depend upon the obviousness of such ambiguity for obscurity. If there be no fraud on the part of the insured and a fact is imperfectly represented, yet is so represented as obviously to suggest further inquiry on the part of the insurer, the *representation* is sufficient. And when a *sufficient representation* is thus made to put the underwriters upon inquiry for further information, if they wish for it, and they neglect to make such inquiry, they are bound by the policy. (615.)

10 Pick. Mass. 535; 1 Phil. Ins. 313, § 584; 1 Sumn. C. C. U. S. 451; 4 R. I. 141 Per contra, 22 Mich. 146.

**531.** A *representation* affects only the contract to the making of which it has reference, and once made to a proposed insurance continues to be binding, unless it is subsequently revoked or modified before the policy is executed.

**532.** Under the recent law of Maine :—

(Sec. 19.) Statements of description and value are *representations*, and not *warranties*. No omissions, concealments or mistakes, by the insured, shall prevent his recovery, unless fraudulent or increasing the risk.

## ORAL REPRESENTATIONS.

**533.** *Oral* representations are sometimes made in lieu of *written* ones; while a representation may be more certainly and precisely proved, if in writing, yet it will have its full effect and force, as far as proven, if only *oral*. GRAY, J., says:—

“A *representation* that a fact now exists may be either *oral* or *written*; for, if it does not exist, there is nothing to which it can apply. But an *oral* representation as to a *future* fact honestly made can have no effect; for it is a mere statement of an expectation. Subsequent disappointment will not prove that it was untrue; and if it is a promise that a certain state of facts shall exist or continue during the term of the policy, it ought to be embodied in the written contract.

Hence, *verbal* declarations may, by a provision in the policy, be made to form directly a part of the contract.

1 Philips Ins. 50, § 73; *id.* 314; 9 Allen Mass. 540; May Ins. 192; 2 Ins. Law Jour. 743. See *Albion Lead Works v. Westchester Ins. Co.*, 9 Ins. Law Jour. 435, as to Representations by a Broker.

**534.** An *application* for insurance, made at the office of the company or its agency, and duly entered upon the memorandum or order book, would be considered as evidence, as far as it represented the facts and could be proven. **1409.**

**535.** Where it was agreed that “*smoking* should be strictly prohibited in and about the premises,” and the insured swears that he prohibited *smoking in and about the building*:—

Held: That this was a literal compliance with his part of the agreement to prohibit smoking. In the case of the Insurance Company of North America v. McDowell, 50 Ill. 121, it was stated in answer to a question propounded to the assured, and which became a part of the condition upon which the policy was issued, that *smoking was not allowed*. And it appears there had been *smoking* by some of the employers about the mill, but as soon as the attention of the insured was called to the fact that it was contrary to the terms of the policy, he forbid it, and put up a notice that it was not allowed. (2 Ins. Law Jour. 16.)

**536.** It was then held that, in such a case, the insured only undertakes that he will not himself do the act, or allow others to do so, if by reasonable precaution he can prevent it. In this case appellee prohibited *smoking*, and there is no evidence that he had any notice that his orders had been disregarded, so as to require him to resort to other and more energetic steps for its prevention. He did not agree, that if there should be *smoking in or about the buildings* that the policy should be void. He, or any man that is at all qualified to transact the most ordinary business would not enter into such an engagement, as strangers and others, over whom he had no control, were liable to smoke about the building. Had the evidence shown that his orders were disregarded, and it had come to his knowledge, then a different question would have been presented for our consideration. But the jury were, under the evidence before them, warranted in finding that appellee

*had used reasonable efforts to prevent smoking in and about the buildings.*  
(1 Ins. Law Jour. 809, 816.)

**537.** Where the question was asked in the *application*, "How is the building warmed?" "If any stoves and pipes, how are they secured?" The answer was, "No stoves used." The insured agreed in the *application* that "if any untrue answer was given therein, then the insurance was to be void, and the policy of no effect." The court say:—

"It is not contended that the buildings, or any part of them, *were then warmed by a stove*, but that one was subsequently used for the purpose, and that this *representation was a continuing one*, and was a warranty that a stove would not be used for warming purposes."

**538.** "In the case of *Schmidt v. The Peoria Fire and Marine Insurance Company*, 41 Ill. 295, a similar *representation* was held not to be a *continuing warranty* that there should be no fire in the tannery except under the boiler, as represented during the life of the policy, but only a *representation* of the condition of the property at the time the policy was issued. We will not give a forced construction to language to enable a party to enforce a forfeiture, but rather adhere to the natural import of the words used. *In this case, the questions and answers are in the present and not in the future tense.* The use, then, of the stove was not a breach of the warranty. But, if used recklessly, it might be regarded as increasing the risk, \* \* \* and it was for the jury to say whether it was used in a grossly negligent manner, and they have found it was not."

27 Penn. Sta. 325; 29 How. N. Y. 384; 2 Gray Mass. 221.

#### UNDER RE-INSURANCE.

**539.** The rules in regard to *representations* apply as well to *re-insurance* as to original insurance, and have a broader application in one respect, for the original insured is *not bound* to make any representations as to his own character, whereas the re-insured is *bound* to communicate facts within his knowledge in relation to the character of the original insured, *material* to the risk, and tending to enhance the premium.  
(1056.)

1 Phillips Ins. 314; 1 Parsons Ins. 299; 1 Benn. F. I. Cases 654; 17 Wendell N. Y. 357.

#### WARRANTY.

**540.** There are few distinctions in the law of insurance more significant and material than that which subsists between a *representation* and a *warranty*. They differ in the *mode*, not in the duty of performance. A *representation* is a part of the preliminary proceedings which propose the contract, but does

not appear in the policy—a *warranty* is part of the completed contract. The latter must be *strictly* and *literally* complied with, while, with the former, if complied with *equitably* and *substantially*, it will be sufficient.

**541.** It is difficult, in many cases, to distinguish what phraseology makes a *warranty* from what is only a *representation*, and the phraseology which will make either from what is only *description* to identify the subject insured. And when a provision has been construed to amount to a *warranty*, or to merely a *representation*, it is still difficult, in many cases, to distinguish what is a "*literally*" true, or *strictly* accurate statement of the facts from one that is only *substantially* true.

1 Philips Ins. 344, § 438; *id.* 418, subject; and authorities cited. Civil Code L. O. §§ 2490; 3572; 31 N. J. 244; 1 Arnould Ins. 190; May Ins. 192.

**542.** Every statement in the policy is not necessarily a *warranty*. To be such, it must relate to the risk, and contain something more than facts incidentally expressed or introduced by way of recital, or to identify the subject insured, and not purporting on the face of the policy to be stipulations.

3 Comst. N. Y. 122; 13 Conn. 533; 1 Philips Ins. 418; 31 Mo. 219; 6 Hun. N. Y. 353.

**543.** The party warranting undertakes that the matter is such as he represents it, and unless it be so, whether it arise from fraud, mistake, or negligence of an agent, or otherwise, then the contract is not entered into; there is, in reality, no contract.

Cowper 785; 1 Phil. 344; 1 Arnould 584; 8 Ins. Law Jour. 139; Shaw's Ellis Ins. 84, 85; 3 Kent Comm. 288; Scott v. Quebec F. I. Co., 2 R. de L. 78, 125.

**544.** *Warranty* always forms part of the policy when so appearing upon the face of the contract, or printed on the same sheet and delivered with it (6 Wend. N. Y. 488), and is a stipulation that the facts are such as represented, upon the *literal* truth of which the entire contract depends. Hence, a *literal* compliance with the terms of a *warranty*, and not merely a substantial one, can be exacted. It cannot be deviated from in the smallest particular, whether material or immaterial to the risk, without voiding the policy.

4 R. I. 141; 2 Curtis, U. S. C. C. 612; 3 Dow. 255; Cowper 785; 6 Cush. Mass. 9; N. Y. Code, § 1416; 3 Kent. Comm. 288.

**545.** When statements are made with the qualification that "*they are true so far as known to the applicant and material to the risk,*" it is

Held: "That such statement, though in terms a *warranty*, must be of a matter *material* to the risk, and that the insured *knew of its falsity* at the time, or the validity of the policy will not be affected thereby." (648.)

6 Minn. 82; 50 Me. 580; 29 Ind. 586; 9 Ins. Law Jour. 222.

**546.** It is perfectly immaterial for what purpose a *warranty* is intended; no contract exists unless the thing warranted is literally performed. (516.)

N. Y. Code, § 1421; Marsh. Ins. 254, 287; and authorities *supra*; 3 Kent Comm. 288; 12 Cush. Mass. 416; 31 Iowa 336; 4 Gray Mass. 337, 340.

**547.** "The *materiality* of the thing warranted to the risk is not important; *compliance* with it is a condition precedent to recovery upon the contract. But when the insured *warrants facts as far as material*, the *materiality* is important; but a strict compliance ought to operate in favor of, as well as adverse to, the insured, whenever he can bring himself within the terms of it." (644, 648.)

3 Kent Comm. 288; 6 Cush. Mass. 340; 17 Mo. 255; 18 Ins. Law Jour. 242, 247, 249, 436.

**548.** If a *warranty* be intended to mislead, it is a fraud; a *warranty* being false, there is no contract, inasmuch as a *warranty* affirms the truth of the facts it embraces, and, as a necessary consequence, the falsehood of the allegation is an intentional fraud, whether the *warranty* be express or implied. (Marsh. Ins. 287; Park Ins. 177.)

**549.** Stipulations, though having the character of *warranties* and conditions, are to be reasonably construed in reference to the subject-matter, and not captiously nor merely literally, the spirit of the contract and not the letter being duly considered. (59 N. Y. 557; 6 Ins. Law Jour. 642, 653.)

**550.** "*Warranties* are not created or extended by construction; they must arise, if at all, from the fair interpretation and clear intentment of the words used by the parties."

98 Mass. 391; 18 Ill. 553; 59 *id.* 123; 7 Wend. N. Y. 72; 2 Ins. Law J. 743, 810; 1 *id.* 9; 6 *id.* 921; 12 Moore P. C. Cases 475.

**551.** The *intentions* of the parties warranting, except as

to the meaning of the words used, cannot be inquired into. The courts, nevertheless, will look closely to the *intention* of a *warranty*, and will not construe it more strictly than it really imports. The construction of the language will be determined, as in other cases, by usage and common acceptance. (193.) (2 Curtis C. C. U. S. 610; 4 R. I. 141.)

WARRANTIES are either *express* or *implied*.

**552.** *Express or affirmative warranty* is a particular stipulation introduced into the written contract by agreement of both parties, and usually appears in the form of a condition of the policy, stipulating that certain facts are or shall be true, or certain acts have been, or shall be done by the insured, who ratifies the stipulation by the acceptance of the policy.

Any statement or averment of a fact, or any undertaking or description on the part of the insured, on the face of the policy, which relates as a matter of fact to the risk, amounts to an express warranty \* \* \* whether the thing warranted be material or not, and whether the loss happened by reason of a breach of warranty, or did not, is immaterial. A breach of it avoids the policy *ab initio*. (3 Kent's Comm'y. 288.)

Sovereign Ins. Co. v. Moir, S. C. Can. Feb., 87; 13 Wr. Pa. 367; 3 Allen Mass. 213; 4 Gray Mass. 337, 380; 49 Me. 209; 1 Allen Mass. 305, 308; 6 Cush. Mass. 340. v. Casey Pa. 315; 3 id. 325; 25 Wend. N. Y. 374; Flanders Ins. 204, 5. 13 Comstock 544; 54 N. Y. 193; N. Y. Code. §§ 1379, 80, 87, 97; Civil Code L. C., §§ 2490, 2491, and authorities cited, Scott v. Quebec F. I. Co., 2 R. de L. 125; Grant v. Aetna Ins. Co.—Privy Council—6 L. C. J. 224 12 L. C. R. 386; 13 Moore's P. C. C. 516, 5 L. C. J. 285, 11 C. R. 128.

A non-compliance with an *express warranty* that certain things shall be done by a certain time, does not vacate the contract from the commencement of the risk, but only from and after such non-compliance. (8 Metc. Mass. 114; 10 Cush. Mass. 446; Civil Code L. C., § 2491.)

**553.** Where insured property was described as "to be occupied as three stores, *but not as coffee-houses*," and it was proven that before and at the time of the fire one of the tenements was occupied as a coffee-house; the fire originated next door,—

HELD: "That although, as a general rule, words of *description* in a policy would not be considered words of *warranty*, yet the use of the negative words, *not to be used*, left no room for that construction; and that those words must be construed as words of *warranty*."

**554.** In *express warranties* the acts of agents and servants are imputed to their principals.

**555.** IMPLIED WARRANTY is an agreement not expressed in the policy, but which necessarily results from the nature of the contract, or is presumed from the fact of effecting the insurance. (1 Philips Ins. 321, 324; 1 Arnould Ins. 41; Angell Ins. 198.) What is implied is as effectual as what is expressed. (4 Ins. Law Jour. 487; Civil Code L. C., § 2491.)

**556.** Matters of *implied* agreement in the policy need not be represented by the insured in the first instance, but he is bound to make answers to inquiries by the underwriters relating to matters of *implied warranty*; and though no such inquiries be made, still, if the insured *voluntarily* make representations of that description, he will be bound thereby, and the policy will be void unless they are substantially true.

As far as a representation extends, an *implied warranty* ceases.

1 Philips Ins. 362; 3 Term R. 477; Marsh. Ins. 287; 12 Johns. N. Y. 128

**557.** The rule which prevails upon the sale of property, that a warranty does not extend to defects which are known to the purchaser, does not apply to *warranties* contained in contracts of insurance.

2 Denio N. Y. 75; 10 Barbour N. Y. 285; 2 Caines. N. Y. 155; 13 Mass. 96

**558.** "If by any words of reference the stipulations in another instrument, such as a *proposal* or *application*, can be construed a *warranty*, it must be such as to make it, in legal effect, a part of the policy." (501.)

N. Y. Code, § 1416; 5 Denio 326; 1 Parsons Ins. 123 n.

**559.** An application becomes a *warranty* only when written or dictated and *signed by the applicant*, or *his authorized agent* for him, and must be referred to in the policy, and there made a *warranty* and a part thereof. A mere reference in the policy, by way of recital or otherwise, to a *survey* furnished by the insured, for a description of a building insured, does not make it a part of the policy, so as to require precise accuracy and conformity to the description as in a *warranty*; a substan-

tial conformity will suffice. But, if such survey be referred to "as forming a part thereof," it becomes a *warranty*. (500.)

50 Pa. St. 331; 1 Clifford U. S. C. C. 300; 18 Ind. 382; Park Ins. 201; Cowper 790; 4 Ins. Law Jour. 33, 876; 2 Benn. F. I. Cases 696; C. C. L. C., § 2181.

**560.** A *warranty* need not necessarily be expressed in any particular form of words, if reasonably explicit. (Angell Ins. 140.)

**561.** In case of a *warranty*, the burden of proof is upon the party seeking indemnity.

**562.** In case of a *representation*, the burden is upon the defendant.

#### GENERAL WARRANTY.

**563.** *Condition of the policy.*—"AND IT IS HEREBY UNDERSTOOD AND AGREED, by and between this company and the assured, that this policy is made and accepted in reference to the foregoing terms and conditions, and to the *classes of hazards and memoranda* printed on the back of this policy, which are hereby declared to be a part of this contract, and are to be used and resorted to in order to determine the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for in writing." (482, 483.)

**564.** The effect of the foregoing condition is to put *all* of the stipulations of the policies upon the footing of *warranties*. The contract is made and accepted with reference to them, and any failure to comply with any of the essential particulars will void the contract. See "*Classes of Hazards*," *supra* 482, 483.

**565.** On the other hand, when a policy contained this stipulation, the court in the case of *Dauids vs. Hudson River Ins. Co.* (12 Cush. Mass. 417) say:—

"In this case the policy was made in reference to the terms and conditions annexed; but these were referred to, not as conditions precedent, but to be used and resorted to, in order to explain the rights and obligations of the parties hereto in cases not herein otherwise specially provided for. Hence, they are not to control or alter any express provision in the contract, or become parts of the policy; but they are statements in a collateral document, which both parties agree to as an authoritative exposition of what they both understand as the facts, in the presumption and truth of which they contract, and the relations in which they stand to each other. They are not *warranties*, but are to be treated as *representations*. Where there is any room for construction, the leaning of all courts is, to hold stipulations to be *representations*, rather than *warranties*."

## DIAGRAMS.

**566.** Diagrams, or ground-plans of risks proposed for insurance, supposed to exhibit the class of building, size, height, location and exposures from surrounding risks, etc., now usually form a part of every application and survey, outside of cities; of most of the leading ones of which there are separate plans, to which references are made. Like all other matters connected with the application, the facts appearing on the diagram, as to distances of surrounding buildings, or other material matter, must be correctly shown or the policy will be avoided.

*O'Neil v. Ottawa Agricult. Ins. Co.*, U. C. C. P.; *Quinlan v. Union F. I. Co.* Sup. Ct. Montreal.; *Somers v. Athenæum Ins. Co.*, 9 L. C. R. 61; 3 L. C. J. 67

**566a.** Where the condition of the policy provided that *representations should be deemed warranties*, and the insured, in reply to a question as to adjacent buildings, said, "*See diagram.*" HELD: "That there was no *warranty* of the correctness of the diagram."

## MISREPRESENTATION.

**567.** *Conditions of the policy.*—"And any false representation by the assured of the condition, situation or occupancy of the property, or any omission to make known every fact material to the risk, or any over-valuation or misrepresentation whatever, either in a written application or otherwise \* \* \* then this policy shall be void." (478, 1.)

**568.** The question of *misrepresentation (suggestio falsi)* usually has reference to the insured, because the facts are known to him only, and the insurance is made upon his statements mostly or wholly, and he is therefore under stringent obligations to make a fair disclosure of attendant circumstances. This doctrine is equally applicable to the underwriter in certain cases. (612, 1565.)

10 Pick. Mass. 40, 535; 18 77, 419; 4 Mass. 330; Marsh. Ins. 336; L. C. Civil Code § 187; Stat. Cond. Ont., § 1; 1 Philips Ins. 309. § 675.

**569.** A *misrepresentation* is the assertion of a material fact, which the insured knows to be false; or which he makes in an unqualified manner, not knowing if it be true or not.

1 Cases 129; *Gidley v. Standard Ins. Co.*, H. C. J. Ont., Q. B. Division 18 Ind. 352; *Shaw v. St. Lawrence Co. Mut.*, 11 U. C. Q. B. 373, 8 L. C. J. 29; *Carver v. Collins*, 4 L. C. R. 201, 4 L. C. R. 105.

**570.** A *misrepresentation* will void the policy as a *fraud*, but not as a part of the agreement, as in case of a warranty; and, to render a policy void, it must not only be *false*, but it must be *material*, either in relation to the rate of premium, or as offering a false inducement to the underwriter to take the risk at all. (577.)

1 Story C. C. U. S. 57; 6 Pelton S. C. U. S. 516; 34 Pa. St. 230; Goodwin v. Lancashire F. I. Co., 16 L. C. J. 298, 18 *id.* 1.

**571.** A *representation* is *false* when it fails to correspond with the facts that it affirms or stipulates; hence, its falsity is either *intentional* or *accidental*. (Marsh. Ins. 335.)

**572.** When an applicant for insurance represents that the risk has been accepted by other companies at a rate named, when, in fact, no such acceptance had been agreed for, or if they had refused to renew a former policy on the same risk, except at an advanced rate above that named, it would be a *misrepresentation*, and vitiate the policy. (1057.) (13 La. Ann. 246; 2 Dow. 263; Civil Code L. C., § 2485.)

**573.** When representations, whether *affirmative* or *promissory*, are made with intent to deceive, the *fraud* vitiates the contract in all cases, even though the loss happen in a mode not effected by the falsity. *Partial fraud*, when intentional, is equally fatal; the test of *materiality* of a partial fraud is the same as of the representation itself. The law recognizes no partial fraud; has no scales to weigh the degrees of fraud. (Park. Ins. 176.)

**574.** When the insured affirms a fact which he knows to be *false*, or does not know to be true, if the fact prove otherwise, it is a *fraud*. The falsity, to be complete, must reach the substance of the representation.

20 Mich. 359; 27 Ind. 41; 103 Mass. 503; 12 Bush. Ky. 723; 10 Gray Mass. 508; 1 Story Eq. § 163; 21 N. Y. 234; N. Y. Life Ins. Co. v. Parent, 3 Q. L. R. 163.

**575.** When a representation of an expectation, or belief of the insured, may be reasonably construed as referring to his *intentions* or his *information*, its intentional falsity will vitiate the policy; but, when expressing only a *conjectural opinion*, it is immaterial.

1 Sumner C. C. 434; 2 Duer Ins. 144; 1 Philips Ins. 287, 474; 2 Me. 173; 20 Minn. 17.

**576.** When *fraudulent* intent is doubtful, evidence that the *misrepresentation* did not materially change the risk may be received, to prove that the falsity was the result of mistake or inadvertence, and not of design. (49 Me. 200.)

**577.** If a representation be false in any *material* point, it will avoid the policy; and, if the point be not *material*, the representation can hardly in any case be fraudulent. (Annesley Ins. 124, citing Lord Mansfield.)

**578.** If the fact misrepresented be on a matter concerning which the insured is not required to make any representations, still, if such misrepresentations tend directly to induce the insurer to underwrite where he might not otherwise do so, or to write at a lower rate of premium, it is a *misrepresentation*; nor is it important that the circumstance misrepresented should actually affect the risk. (1 Wood, F. Ins., § 150; 18 Ins. Law Jour. 250.)

**579.** If either party, purposely or through mistake, negligence, inadvertence, or oversight, *misrepresent* a fact which he is bound to represent truly, the other party is exonerated from the contract, either wholly or in part; for it is an implied condition of the insurance contract that it is free from *misrepresentation* or concealment, whether fraudulent or through mistake. (1 Philips Ins. 372; 4 Ins. Law Jour. 165.)

**580.** The substantial *falsity* of a representation in cases exempt from *fraud* does not always render the contract *wholly* void; as when the policy has attached, and the representation may be falsified by a *subsequent event*, the breach does not, by retroactive force, render such a policy void in its origin. It discharges the underwriter from the time the breach occurs, but does not release him from liability for antecedent losses, if any.

**581.** In cases of *misrepresentation* as to *values*, if such misrepresentation cannot be explained by difference of opinion among experts, the policy is voided. Any *misrepresentation* of *title* or *interest* voids the policy.

Civil Code L. C. 2514; 23 U. C. C. P. 278; 18 *id.* 74; 11 U. C. Q. B. 73; 9 Ins. Law Jour. 743; 35 Mo. 148; 14 Md. 295; 2 Ohio St. 476; 32 N. Y. 441; 29 Grat. Va. 372; 2 Ins. Law Jour. 743; N. Y. Code, § 1383.

**582.** A *misrepresentation* or concealment by one party of a fact specifically inquired about by the other, though not material, will release the latter from the contract as if such fact had been material. (**503. 1565.**)

8 Ins. Law Jour. 382, 720; 1 Philips Ins. 281, § 542.

**583.** It is the duty of the insured to prove that the representation was true; or was substantially complied with; or that it was positively or relatively immaterial; or, if material, that it was wholly disregarded by the insurers, and had no influence upon their decisions.

1 Sumner C. C. U. S. 434; 8 Cush. Mass. 82; 2 Ins. Law Jour. 829

**584.** In the English Hand-in-Hand policy, Sec. 1, misrepresentation is made to apply only to that portion of the property affected by the misdescription.

#### FRAUD.

**585.** *Condition of the policy.*—All fraud or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claims upon this company and this policy. (**478. 96.**)

**586.** FRAUD, in its ordinary application to cases of contracts, includes any trick or artifice employed by one person to induce another to fall into, or detain him in an error, so that he may make an agreement contrary to his interest. It may consist in misrepresenting or concealing *material* facts; and may be effected by words or actions. *Fraud* is rarely found on the part of the insurers; they are obliged to be governed by the assertions made and documents exhibited by the insured, and not unfrequently fall victims to their credulity. (Stat. Cond. Ont., § 14; Civil Code L. C., §§ 2487, 2514.)

1 Chitty Cont. 527, 529; Story Cont., §§ 171, 172; 1 Starkie 434; 2 Greenleaf Ev., § 402.

**587.** *Fraud*, both in law and equity, when sufficiently proved and ascertained, avoids a contract *ab initio*, whether such *fraud* be intended to operate against one of the contracting parties, or against third parties, or against the public. (1 Benn. F. L. Cases 670; 5 Ins. Law Jour. 760.) An *intention* to violate, entertained at the time of entering into the contract, but not afterwards carried into effect, does not vitiate. (1 Story C. C. 124.)

**588.** The *fraud* of an agent, by a misrepresentation which is embodied in the contract to which his agency relates, avoids the contract. (Weskett Ins. xxxii., xxxiv.; 2 Ins. Law Jour. 922.) But the party committing the *fraud* cannot, in any case, himself avoid the contract on the ground of *fraud*.

W. Black 364; 119 Mass. 121; 38 Barb. N. Y. 569.

**588a.** If a person colludes with an agent to cheat the principal, the latter is not responsible for the acts or knowledge of the agent. The rule which charges the principal with what the agent knows is for the protection of innocent third persons, and not those who use the agent to further their own frauds upon the principal. (1888.)

2 Ins. Law Jour. 818; 6 *id.* 584; Phenix Ins. Co. v. Willis, 8 C. Texas; Goff v. Fourth Nat. Bank, St. Louis C. Appeals; Sunbury F. I. Co. v. Humble, S. C. Pa.

**589.** Circumstances of mere suspicion, leading to no certain results, will not be held to establish *fraud*, either in law or equity. A mere intention to violate a policy can never have the effect of an actual violation. (14 Johns. N. Y. 46; 3 Cranch. 307.) Fraud must not be presumed. Fraud without damage, or damage without fraud, gives no cause of action. (3 Term R. 51.)

Judge Cadwallader, U. S. C. C., Philadelphia, speaking on this point said:

"It (insurance) is part of the estimated security of commercial wealth, and while, on the one hand, fraud or trick or artifice on the part of the insured should be reached with fair and industrious scrutiny, and visited with stern condemnation, yet, on the other hand, surmises and guesses and intimations of suspicion, or of that which you won't call by its right name, is a very dangerous process of reasoning on a case of insurance."

**590.** *Fraud*, as connected with the fire insurance contract, consists in a misrepresentation or concealment of *material* facts; and is treated by the courts as of two kinds, viz. *suggestio falsi*, and *suppressio veri*.

**591.** *Suggestio falsi* (misrepresentation), or *actual, positive* or *moral fraud*, includes cases of intentional and successful employment of any cunning, deception, or artifice, used to circumvent, cheat, or deceive another; as the statement of a falsehood, when the party making it is bound to disclose the truth;

or as any willful misrepresentation with intent to deceive.

1 Park Ins. 175; Marsh. Ins. 335; Moens v. Heyworth, M. & W. 158.

**592.** *Suppressio veri* (concealment), or *legal* or *constructive fraud*, includes such contracts or acts as, although not originating in any actual evil intent to perpetrate *fraud*, yet, by the tendency to deceive and mislead others, are prohibited by law, as when the underwriter may be misled or deceived by an *innocent* or *undesigned concealment, omission, or mistake* by the insured. (605.)

Civil Code L. C., § 2488; N. Y. Civil Code, ss. 1373-1383; 3 Burr. 1905; *Barilou v. Royal Ins. Co.*, 15 L. C. R. 1.

**593.** "*Concealment and representation are not correlative terms; a concealment, when it avoids the policy, is of those facts that tend to enhance; while representation is of facts that tend to diminish the risks, as they would otherwise be understood by the underwriter.*"

**594.** "As insurance is a contract of a peculiar nature, 'entirely on speculation,' and requiring the utmost good faith in all parties, the slightest *fraud* is usually sufficient to defeat it; and anything that the law deems *fraudulent* will produce that result; so that it does not avail the insured that the *suppressio veri* happened through mistake or ignorance, without fraudulent intent; the underwriter was deceived withal, and the policy is consequently void."

Lor 1 Mansfield, 3 Burr. 1905; *Weskett Ins.* xxviii.

**595.** It is not the rule that *fraud* must be shown by affirmative testimony. Proof of such *fraud* may be shown by circumstances from the existence of which the inference of *fraud* is natural and irresistible. (*Annesley Ins.* 125.)

#### FRAUDULENT SWEARING

**596.** A stipulation of the policy declaring that "all fraud or *false swearing* shall cause a forfeiture of the claim on the insurer," is held to relate solely to the preliminary proofs of loss.

Stat. Cond. Ont., § 14; 1 Hill N. Y. 71; 51 Md. 32; 27 N. H. 149; 3 Camp. 319; 1 Dil. C. C. 441, 443.

**597.** *False swearing* is held to mean any attempt to defraud the insurer by swearing intentionally, and with bad motive, to the existence of property which the insured had never lost; or, not acknowledging that which was saved; or, by greatly overcharging that which was destroyed. (602-3.)

16 U. C. C. P. 493; 2 Benn. F. I. Cases 84; 43 Pa. Sta. 350; 2 Hall N. Y. 280.

**598.** Any attempt at fraud in making a claim for loss voids the policy under which the claim is urged.

"In fact, if the plaintiff had deliberately introduced into his claim one article which he never possessed, or placed upon any one he did not possess a fraudulent and false value, he was not in point of law entitled to recover from the defendants."

60 N. H. 239; 22 Mich. 467; 6 Bosh. Ky. 146; 3 Ins. Law Jour. 649, 668; 9 U. C. C. P. 85; Lion Fire v. Starr, S. C. Texas, 18 Ins. Law Jour. 872; Seghetti v. Queen Ins. Co., 10 L. C. J. 243.

**599.** Excessive *over-valuations* are presumptive of *fraud*; and false declarations, willfully made, and so proven, void the claim. An *over-estimate* of the loss is not a forfeiture under the conditions against *false swearing*. To create a forfeiture, the *false swearing* must be done willfully and knowingly, with a view to defraud the underwriter. Fraudulent intent must be clearly proven. And as to the evidence of *guilty intent* to injure an insurance company, if the jury shall find that the invoice and preliminary proof presented by the insured to the insurance company were false and fraudulent, these circumstances, or either of them, would be evidence from which the jury could infer such *guilty intent*, both as to the filling out and the *intent* to injure such company. But the jury, in deciding this question, must take into consideration all the evidence in the case, and must be able to find from it the *guilty intent* aforesaid, before they can convict the insured.

3 Ins. Law Jour. 79; 7 L. C. J. 100; 18 U. C. Q. B. 246, and authorities (598) *supra*; Laroque v. Royal Ins. Co., 23 L. C. J. 217; Grenier v. Monarch Ins. Co., 3 L. C. J. 100; Thomas v. Times & Bacon Ins. Co., 3 L. C. J. 162.

**600.** Where the finding by a jury was for less than half the amount claimed in the affidavit of the claimant: Held to be evidence of *false swearing*, and to void the entire claim, unless the claimant can show that the difference was the result of error, and not of *fraudulent intent*.

So, also, if the statement of loss, sworn to by the insured, be

disproved by witnesses, he is precluded, on that ground, from recovery on the policy.

**601.** The mere fact of the jury finding a less amount as lost than claimed will not sustain a charge of *fraudulent swearing*. It must be not only willful and with intent to defraud, but must have been in respect to *material* matter.

1 Rob. La. 216; 29 Me. 97; 43 Pa. Sta. 350; 7 U. C. C. P. 548; 17 Nev. 174; 35 Mo. 148.

**602.** The following decision in a suit where arson and *fraudulent swearing* were pleaded in defense (*Chapman v. Pole*, 22 Legal Times [N. S.] 306) covers the ground of *fraudulent swearing* so completely that it is given somewhat *in extenso*. MR. JUSTICE WILES said:—

"The contract of fire insurance is a contract to indemnify against the consequences of a fire *not willful*. Of course, if the assured set fire to his house, he could not recover; that was clear. But suppose he made a claim for twice the amount insured and lost, thus seeking to put the office off its guard, and, in the result, to recover more than he was entitled to, that would be a *willful fraud*, and the consequence was that he could not recover anything."

**603.** "This was a defense quite different from that of willful arson. It gave the go-by to the origin of the fire, and it amounted to this: That the assured took advantage of the fire to make a fraudulent claim."

"The law in such a case was in accordance with justice and with common sense, and also with sound policy. The law was that a person who had made such a *fraudulent claim* could not be permitted to recover at all. The contract of insurance was one of *perfect good faith on both sides*, and it was most important that such good faith should be maintained. Sound policy led to the same conclusion in such a case at law. It is *impossible to conceive a greater temptation to dishonesty and vice, and the willful destruction of property, than to allow a claimant to run his chance of making a willfully exaggerated claim, and when detected to permit him to recover such sum as he could prove*. If there was willful falsehood and fraud in the claim, the insured forfeited all claim whatever upon the policy."

**604.** Where a claim was made for \$9,296.47, as the amount of loss under an insurance of \$7,500, and it was referred to referees to find the actual amount of loss, which was proved to be only \$3,231.29, the decision of the referees was, that the claim of the claimants for a loss of \$9,296.47 was groundless, and *they knew that it was not over the amount proved* (\$3,231.29). Their claim should, therefore, be dismissed with costs. The costs amounted to \$1,000.

## CONCEALMENT.

**605.** CONCEALMENT, or *Suppressio veri*, is the suppression of or neglect to communicate *material* facts, unknown to the insurer, concerning the risks which have reference to the pending bargain; and which, if communicated, would tend directly to prevent the underwriter from entering into the contract at all; or would induce him to demand a higher rate of premium upon the risk.

1 Phil. Ins. 277, 304, 341; Bunyon Ins., 2d. ed. 64; Angell Ins. 231, and authorities cited; 1 Arnould Ins. 536; 1 Wash. C. C. 400; N. Y. Code, §§ 1379, 1383, 1514; Civil Code L. C., § 2487.

**606.** Concealment is the converse of *misrepresentation*. A suppression of the truth has the same effect as an expression of what is false, and it is to be considered, not with reference to the event, but to its effect at the time of making the contract. (Marsh. Ins. 348.) The non-answering a specific question would amount to concealment, if the applicant knew of the fact and was able to answer.

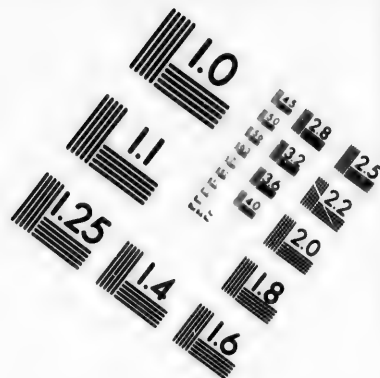
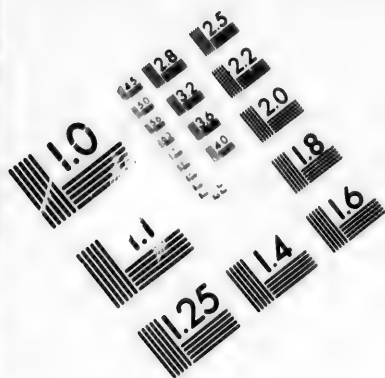
London Assur. Co. v. Mansell, 9 Littledale, 11 ch., p. 369; Lancashire Ins. Co. v. Chapman, P. C., 7 R. 47, 13 L. C. J. 36

**607.** The *general principles* governing the doctrine of concealment are, that each party is bound to communicate to the other *all facts* within his personal knowledge which tend to show the true character and value of the risks intended to be covered; and that each, in his own communications to the other, is bound to state the exact and the whole truth in relation to the facts that he represents or, upon inquiry, discloses. (1655.)

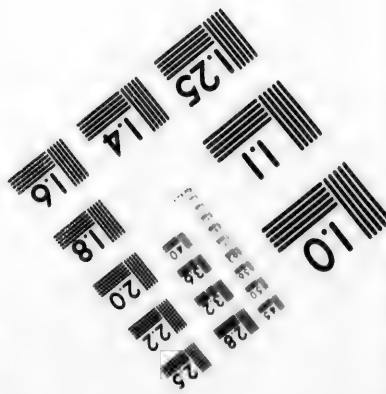
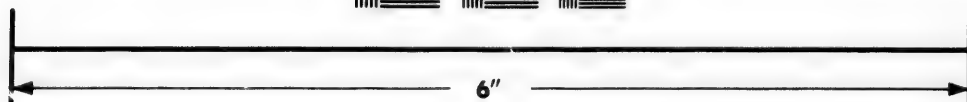
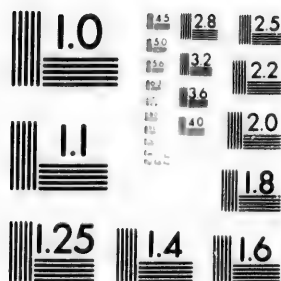
1 Black. R. 465, 594; Angell Ins. 209; May Ins. 210; Civil Code L. C., § 2488. Wilson v. State Ins. Co., 7 L. C. J. 223.

**608.** The *general rule* is that it is the duty of the insured to communicate all facts *material* to the risk, and which are not known or presumed to be known to the underwriter. Those facts only are necessary to be disclosed which, as *material* to the risks, considered in their own natures, prudent and experienced underwriters would deem it proper to consider, and which would affect the mind of the insurer in either of these two ways, viz. :—

*First*, as to the point whether he will insure at all.



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*Second*, as to the point at what premium he will insure.

1 Phil. Ins. 28, 341; 3 Story Jurisp. 5, 215; 34 Barb. N. Y. 213; 10 Pick. Mass. 535; 1 Handy, O., 408; May Ins. 210; 3 Benn. F. I. Cases 169, and authorities there cited.

**609.** The *maxim* is, that where confidence is reposed, the *concealment* becomes more fraudulent. (U. S. C. C., N. D. Iowa, 1861.)

**610.** The *materiality* of a suppression or concealment, whether fraudulent or not, is alone sufficient to void the policy. (**644.**) (25 Conn. 59; 2 Rob. La. 266.)

**611.** If *material* circumstances, known to the applicant at the time of insurance, are suppressed or omitted by him, through accident or design, the policy will be breached; nor is it of any importance that the circumstances suppressed or omitted, or to which the concealment relates, prove actually not to affect the risk; nor that the suppression or omission should happen by mistake, without fraudulent intent; the result is that the underwriter is deceived; hence the policy is void, because the risk run is really different from the risk undertaken and intended to be run at the time of the agreement. Or, if the fact suppressed relates to a portion only of the goods or subjects covered, but yet enhances the risk upon the whole, it is *concealment* in respect to the whole.

1 Handy, O., 208; 2 Rob. La. 266; 25 Conn. 51. As to exposing buildings: see 10 Barb. N. Y. 285; 5 Hill N. Y. 188; 18 N. Y. R. 376; 1 Allen Mass. 305, 308; 52 Me. 60; 14 U. C. Q. B. 439; 20 U. C. C. P. 447; Civil Code L. C., § 2489.

**612.** Any circumstances evidently and materially enhancing the risk of fire, known to the applicant at the time of insuring, and not so, or presumed to be so, to the underwriter, and of which he is not bound to inform himself, or to take the risk of, must be disclosed, though no inquiry is made respecting it.

Park. Ins. 185; 1 Philips Ins. 281; 25 Conn. 51; 1 Handy, O., 208; 20 Mo. 125; 16 Grant Ch. 198; 47 id. 493; 18 Md. 26; Goodwin v. Lancashire F. & L. Ins. Co., 16 L. C. J. 298, 18 *id.*

**613.** The underwriter is under corresponding obligation to withhold no information to the injury of the insured. (**568.**) (1 Phil. Ins. 306; 8 Howard, U. S., 235.)

**614.** If the insured be induced to take out insurance by an

attempt to burn his own or an adjacent house, the destruction of which would have destroyed his own; or, if by rumors of threats to burn his own premises, and conceals these facts from the underwriter, he cannot recover.

6 Taunton 338; 10 Pick. Mass. 535; 25 Conn. 51; 17 Wend. N. Y., 359; 23 Mich. 146; 9 Gray Mass. 148 Per contra; Campbell v. Vict. F. I. Co., 4 L. N. 79.

**615.** The concealment of the fact of a fire having previously occurred upon the premises of the applicant, even though the omission be through inadvertence, and without fraud, vitiates the policy; but if enough be made known to put the underwriter upon inquiry for more, and he fails to make further inquiry, the insured is not bound to force his knowledge upon the company.

25 Conn. 51; 12 La. 134; 10 Pick. Mass. 535.

**616.** But the S. C. Mich. (22 Mich. R. 146) upon appeal: "Held, that the disclosure of the fact of the fire and of his reasons to fear danger from incendiaries was material to the risk; that it was not competent to submit to a jury the question of materiality; and that it was no defense that information was given sufficient to put the agent of the company upon inquiry." (530.)

**617.** Inadvertent omission of facts *material* to the risk, and such as the insured *should have known to be so*, renders the policy void. (Authorities as above.) Such knowledge, however, is never presumed, but must be established in all cases by positive evidence.

**618.** Nor can it be said that a *concealment is material*, unless the court or jury is satisfied that a disclosure of facts concealed might reasonably have induced the underwriter to decline the risk or enhance the premium.

1 Phil. Ins. 304; 15 L. C. R. 1; 21 U. C. Q. B. 214.

**619.** Intelligence of an *additional material fact*, obtained by the applicant after his application and before the subscribing of the policy, must be communicated to the underwriter by the earliest and most expeditious usual route of mercantile communications; but due and reasonable diligence will suffice.

Omission to use *due diligence* will be deemed a fraudulent and fatal *concealment*. (1649.)

3 Johns. N. Y. 525 ; 10 Pick. Mass. 402 ; 1 Phil. Ins. 280, 297, 560.

**620.** *Voluntary* ignorance of the insured or his agent, or neglect to learn material facts, whether the result of fraud or gross negligence, will not excuse the insured, but will vitiate the policy to the same effect as actual knowledge concealed.

1 Phil. Ins. 283 ; 8 Ins. Law Jour. 718.

**621.** A representation or *concealment* by an agent for procuring insurance is that of his principal, though not known to him, and has the same effect upon the policy as if made by such principal. (1 Phil. Ins. 298.)

As to what is not concealment in law, Or,

#### KNOWLEDGE OF THE UNDERWRITER.

**622.** The underwriter is bound to know everything that is open to his inquiry, and nothing need be disclosed which he waives being informed of ; but he is not bound to seek elsewhere for information which should be given by the insured.

Emerigon Ins. 627, 637 ; 1 Black. R. 593 ; Park Ins. 184, 185 ; N. Y. Code § 1383.

**623.** He is chargeable with knowledge of all facts truly stated by the applicant, to such company's agent, respecting title and interest, notwithstanding that the written application, drawn up by such agent, varies from such statement.

34 Barb. N. Y. 213 ; 37 N. Hamp. 35 ; 36 N. Y. R. 556.

**624.** If the underwriter take a risk without inquiry, relying on his own knowledge, there must exist something unusual to enhance the risk in order to vitiate the policy.

29 Pa. St. 31 ; 8 Howard U. S. 235.

**625.** The representations of the insured are immaterial ; though withholding information tending to increase the risk would be incompatible with good faith, and would void the contract.

10 Pick. Mass. 535 ; 6 Taunton 333 ; 4 Ins. Law. Jour. 208.

**626.** Underwriters are presumed to know the *usages* of the particular trade insured ; and these accordingly need not be

represented by the insured. (207.) This, however, will not excuse the insured from replying to the inquiries of the underwriters in relation to the facts to which they extend, such inquiry making the answer material. (3 Burr, 1905.)

**627.** In the U. S. C. C., Dist. of Ohio (in the case of *Washburn v. West, Ins. Co.*), it was held that "any specifically inflammable or hazardous condition, due to the presence of flour-dust, must be presumed to be known to the insurer, if an incident of the business." The risk was a flouring mill, and the loss was by explosion, or so presumed.

#### KNOWLEDGE OF THE INSURED.

**628.** Knowledge of the insured or his agent, of *material* facts alleged to have been concealed, is never presumed; but must be established in all cases by positive evidence.

**629.** *Silence* is not concealment; or, as the old Latin maxim expresses it, "*Aliud est celare, aliud tacere.*" "It is one thing to conceal and another thing to be silent." Hence the insured may be innocently silent upon many matters.

1 Handy O. 408; 13 Grant's Chanc'y 77; 41 Georgia R. 660.

Among them the following:

**630.** It is not held incumbent upon the insured to describe his property particularly as to the material the building is constructed of, to what use applied, or how heated; or represent its situation in respect to other buildings; other insurances or mortgages, *provided*, that there be no extraordinary circumstances in the case, unless inquiries are especially made in regard thereto.

**631.** But, if circumstances exist of an extraordinary and unusual nature, the existence of which would not naturally be presumed or expected by the underwriter, willful or inadvertent suppression thereof would void the policy. Nor is the concealment less fatal, though the circumstances concealed turn out to be unfounded in fact, though supposed to exist at the time.

5 Hill N. Y. 188; 8 How. U. S., 235; 1 Selden N. Y. 474; 29 Pa. St. 31; 39 *id* 293; 30 Mo. 63; Angell Ins. 209; 1 Phil. Ins. 306, 343. See 14 Pa. Sta. 393, cited 3 Benn. F. I. Cases 168, per contra.

**632.** The insured is not required to communicate to the underwriters intelligence known, or presumed from circumstances to be known to them, in whatever way they may have come by the knowledge.

1 Black. R. 593; 3 Burr. 1905; 1 Phil. Ins. 304, 325.

**633.** Facts known at the place of business of *either* party to the policy are, *prima facie*, presumed to be known to such party. Intelligence received and known to the clerks of the insured, at his usual place of business, is presumed to be known to him.

1 Phil. Ins. 297, 326; Marshall Ins. 350, 353; 1 Ins. Law Jour. 413; Civil Code L. C., § 2486.

**634.** The question, whether intelligence is known to the underwriters otherwise than from the insured, is a question of fact for the jury.

**635.** The insured is not bound to communicate his own conclusions, speculations, apprehensions, hopes or fears, as to the risk. His duty of communication is limited to *facts*. Nor need he state that other underwriters had declined the risk; nor what were their apprehensions or opinions respecting it.

**636.** But if the insured states, as a fact, or distinctly implies, that other insurers have already underwritten the risk at a certain rate of premium, this is to be considered a representation, and the insured will be answerable for its correctness accordingly.

Park Ins. 185; Marsh. Ins. 353, 373; 1 Phil. Ins. 326.

**637.** Nor is the insured bound, in the first instance, to communicate any facts that are covered in the policy by a warranty, either implied or express.

4 Ins. Law Jour. 99; Park. Ins. 185.

Nor need the underwriter be told what *lessens* the hazard of the risk agreed and understood by the express terms of the policy. (Marsh. Ins. 356; Civil Code L. C. 2487.)

**638.** Nor is the insured bound to communicate *material facts* when the underwriter expressly or impliedly *waives* such information, by omitting to make more explicit inquiry where, from the facts already communicated, he is bound to infer the

existence of other facts disclosed. Or when he *waives* information by consenting to the insurance in the form in which it is proposed, without further inquiry. (Wood. Fire Ins., §§ 368, 371, 496.)

**639.** Under a condition in the policy, that "it shall be void if the application does not contain a just, true and full exposition of all facts, "*so far as known*" to the applicant, "*it is not true*, as an inference of law, that the applicant is presumed to know *all* of the facts because he is the owner of the estate. The question of "knowledge" is one of fact, to be left to the jury upon the evidence. (8 Met. Mass. 114.)

**640.** When the policy is *altered* for the purpose of varying or enlarging the risk, the obligation to disclose all *material facts* then known exists in its full extent; and the effect of a concealment that renders void the *altered* is not to restore the original contract, but to annul the policy. (Authorities above cited.)

#### UNDER RE-INSURANCE.

**641.** In cases of *re-insurance*, the re-insured is bound to communicate, not only all representations made to himself when he subscribed the policy, but all the knowledge and information *he had subsequently acquired*. The *concealment*, whether from fraud or accident, of any circumstance then known to him, material to the risk, has the same effect on the validity of the contract as that of the original insured. (1056.)

1 Parsons Ins. 299; 1 Philips Ins. 314; 17 Wendell N. Y. 357; 13 La. Ann. 246.

**642.** The obligation to make a full disclosure is even more extensive than that of the original insured, for it embraces facts in respect to which the latter is permitted to be silent; such, for instance, as may affect the moral character of the original insured, provided it has, plainly, a bearing on the risk to be re-insured.

**643.** Facts having come to the knowledge of the insurer that the insured bore a bad character; that his premises had been several times destroyed by fire when fully insured; the insurer then re-insured without communicating these facts to the re-insurers; the suppression defeated the policy of re-insurance.

2 Am. Leading Cases 458; 10 Pick. Mass. 535.

## MATERIALITY

### AS CONNECTED WITH REPRESENTATION.

**614.** The law imposes upon the insured, as a preliminary duty, *in the nature of a condition precedent*, the disclosure of *material* facts connected with the risk.

**615.** Representations are *material* to the risk when they communicate any facts or circumstances, the belief in which may be reasonably supposed to influence the judgment of the underwriter in undertaking the risk and calculating the premium thereupon. (608. 611. 612.)

13 La. Ann. 246; 3 Ins. Law Jour. 743; 60 Barb. N.Y. 84; 20 U. C. Q. B. 200; 4 Allen N. B. 618.

**616.** The *test of materiality* is in the enhancement of the premium had the true facts in the case been given; thus, when the nature of the interest or subject insured, if known, might influence the underwriter to decline the risk, or write upon it only at an advanced rate of premium, it is deemed *material* to the risk; and whatever may be the form of expression used by the insured, if it have the effect of imposing upon or misleading the insurer, it will be *material*, and, on due proof, void the policy. (618.)

2 Dow 263; 2 Ins. Law Jour. 809; 1 Benn. F. L. Cases 701, 705; 10 Peters U. S. 25.

**617.** *Materiality* may result as a necessary consequence from the facts; or may depend upon the testimony of witnesses, or may be deduced from the rate of premium; which, if proved to be much less than prudent underwriters, having a knowledge of the facts, would have charged, would be deemed sufficient evidence. (547. 612.)

4 Ins. Law Jour. 559; Park Ins. 185; 1 Phillips Ins. 281; 25 Conn. 51; 1 Handy O. 20; 20 Mo. 125; 47 id. 403; 18 Md. 26.

**618.** The doctrine of *immateriality* does not apply when the representation is a part of the contract, and especially when it is in reply to a direct question. *If a fact usually immaterial be specifically inquired about by the insurer, it will be considered as material.* Any substantial mis-statement of such fact would void the policy; for it is held that the covenant in the application of "a full and true exposition, etc., etc., *so far as known to the applicant, and material to the risk,* must be

construed in connection with the *specific inquiry*; and that the underwriter, by making a *specific inquiry*, showed that the answer to it was regarded as *material* to the risk; and the insured could not be heard (in court) to say it was *immaterial*." (504. 545.) But a disclosure waived is an admission of immateriality.

5 Hill. N. Y. 192; 6 Curtis C. U. S. 340; 13 Gray Mass. 139; 14 id. 459; 1 Philips Ins. 481, 293.

**649.** Intelligence and rumored facts are equally *material* to be represented. A suppression or misrepresentation of them will defeat the contract, though there did not exist any circumstances tending directly to determine the underwriter to decline the risk, or demand a higher rate of premium (619, 632) and authorities there cited.

**650.** *Valuation, insurable interest and title* are *material* to the risk, and must be represented correctly. (1911.) It is held by the Supreme Court of the United States, that the *nature* and *extent* of the interest insured are *material*, and any concealment or misrepresentation thereof would void the policy; while the courts of New York and Massachusetts hold that the *nature* of such interest is *not material*; and, *if the underwriter deem such information material, it is his business to make specific inquiries in regard thereto*, to which, of course, the insured will be bound to reply correctly and fully. In 6 Humphreys, 176, the court say, in the matter of misrepresentation as to his *title* that—

"Having succeeded in deceiving the company as to his *title*, the assured had a 'strong temptation to apply the brand with his own hand.' His personal character mattered not. The company insured his *interests*, and not his *principles*, and this they had a right to do."

1 Sanf. 551; 10 Pick. Mass. 40, 555; 18 id. 417, 419; 12 Wend. N. Y. 507; 2 Peters U. S. 25; id. U. S. C. 507; 16 id. 495; 15 Shipley 236; 1 Gilman 236; 2 Ins. Law Jour. 813; 3 id. 437, 894; 6 id. 413

**651.** The evidence of skilled parties in the peculiar branch of business at issue will be necessary for the proof, though the facts are for the jury upon the evidence. (1423.)

**652.** The burden of proof of compliance with a representation lies with the insured; but the proof of the *materiality* of a representation lies with the underwriter, especially when such materiality depends upon the evidence of witnesses.

## INSURABLE INTERESTS.

**653.** The insurance contract is one of indemnity simply; it appertains only to the person or party named in the policy, and not to the thing covered by the insurance as the subject of the risk or peril against which the owner is protected. (108.)

**654.** It is not a contract running with the property, real or chattel, forming the subject of the insurance; it is a personal contract (107), and has been so held from the earliest days of fire insurance. In 1727, Lord Chancellor King, in the first regularly reported fire insurance case (*Lynch v. Dalzell*, 3 Brown's Parl. Cases, 497), said:

"These policies are not insurances of the specific things mentioned to be insured; nor do such insurances attach on the reality, or in any manner go with the same as incident thereto, by any conveyance or assignment; but they are only special agreements with the person insuring against such loss or damage as they may sustain."

**655.** The insurance contract is thus an obligation to make good to the party really insured every loss that *he* may sustain from the perils insured against, according to the nature and terms of his insurance, and not an obligation to make good every damage that, from the same causes, the property covered by the insurance may sustain, without regard to the ownership. (109.)

Marsh. Ins. 80, 119; 2 Am. Lead. Cases 405, note Insurable Interests; 6 Humphreys 176; 18 Grant Ch'y. 280, reversing 15 Grant 337; 8 *id.* 552; *Miligan v. Eq. Ins. Co.*, 16 U. C. Q. B. 314.

**656.** Ever since the memorable decision of Lord MANSFIELD, putting an end to wager policies, a century since, an *insurable interest* has been a condition precedent to all insurance, and such interest must be at risk. (50.) (1 Philips Ins. 186.)

**657.** At the time of insurance the property must be in existence, and not on fire, and not at that moment exposed to a dangerous fire in the immediate neighborhood within the knowledge of the applicant. (866. 867.)

2 Dutch. N. J. 268, affirmed in appeal, 3 Dutch 645; 29 Barb. N. Y. 312; 1 Ed. C. 64; 12 H. Black. 343; 8 Term R. 16 n; 3 Camp. 150; 6 Gray Mass. 214; *Emerigon Ins.* 621; 2 Valins Com. 93; 1 Philips Ins. 14, § 17; Civil Code L. C., § 2475; *Shaw v. Phenix Ins. Co.*, 20 U. C. C. P. 179.

**658.** As it is the *individual* who is insured and not the *property* (108), such individual must possess an *insurable in-*

*interest* in such property, at the time of insuring, as a basis of the contract; not necessarily, however, amounting to the legal ownership, but possessing a value that may be pecuniarily computed, and of such a nature that it may be destroyed, lost, damaged, diminished, or intercepted directly, by the risk insured against. Anything short of this would be a *wager* or *gaming* policy (286), and void in law, as tending to create an interest in the occurrence of a loss where none existed for its prevention. Hence, an *insurable interest* may be designated as any existing legal or equitable estate or right, absolute or contingent, which may be *immediately* and prejudicially affected, or any responsibility which may be brought into *direct* operation by a fire. To establish such an *interest* it will be only necessary to show such a connection, between the subject-matter of the contract and the party insured, as may be sufficient for the purpose of deducing the existence of such a loss to him, from the occurrence of injury to it, as may be pecuniarily valued. It is not the name of the right which gives or retires an insurable interest; it is its character. (1201, 1911.)

1 Phil. Ins. 106; 16 Wend. N. Y. 385, affirming 12 *id.*; N. Y. Code, § 1366, 1370; 32 Md. 421; 2 Pick. Mass. 249; 23 *id.* 413; 4 Ins. Law Jour 737; 1 Benn. F. I. Cases 576, 587, 889; Civil Code L. C., § 2474; 7 U. C. C. P. 548; 16 U. C. Q. B. 314; 13 Grant Ch'y. 377; Com. St. U. C., c. 52, § 79; c. 68, § 27; 14 L. C. J. 299, 301.

**659.** Such *interest* must be in existence at the time of the loss upon the subject covered, as well as at the time of effecting the insurance; but it is not necessary, in the absence of any specific condition in the policy to that effect, that the *interest* covered should be the same, either in quantity or nature, at the time of the loss, as when the contract was made. Hence, the *interest* of the insured may be changed from an absolute to a qualified or contingent ownership, or from a legal to an *equitable interest*; and he may recover, in case of loss, if his remaining *interest* is not one which the policy requires to be specifically described. (2 Pick. 249; 23 *id.* 418, and authorities *supra*.)

**660.** An *insurable interest* may exist without any estate or interest in the corpus of the thing under protection of the policy; as the guarantor of a mortgage-deed personally liable for its payment; so also with an insurer; but the insurance must cover

the property mortgaged, in which the mortgagor must have an interest. An insurance company cannot insure a debt or guarantee its payment.

55 N. Y. 343; 5 Ins. Law Jour. 717; 14 L. C. J. 301, 219.

#### LIENS

**661.** No *insurable interest* will exist, in case of *liens*, until every thing has been done which may be necessary to give such *liens* legal effect and validity. (686.)

1 Mason 127; 3 *id.* 255; 4 Ins. Law Jour. 741; Bank of Montreal v. Haffner, 3 Ont. R. 783, 10 Ont. App. R. 592; Same v. Worswick, S. C. R. May, 1885.

#### MUST BE LEGAL.

**662.** It is also an important requisite that the *interest to be insured must be a legal one*; for insurance upon a subject is *void* if the *interest* insured is illegal, or if the contract contemplates an unlawful use of it.

**663.** The general principles in such cases are: "That if a contract be intended to indemnify the owner for loss on property by reason of its being implicated in an *illegal trade*, or applied to an *illegal use*; or which, according to the laws of the country where the contract is made, it is made criminal for the owner to hold, such contract is *void*, and the owner has *no legally insurable interest*; for there can be no more *direct* encouragement to the violation of law, than a contract that secures indemnity to the transgressor." (602-3.)

**664.** So also an act subject by the law to penalty, though not prohibited in direct terms, is *illegal*. But the mere fact that an unlawful business was carried on in a house by others than the owner, such as *gambling, lottery, selling liquor when forbidden by law*, does not defeat recovery on the policy in case of loss, unless the fire originates through such business.

1 Philips 123; § 214, 215; 1 Duer 315; 98 Mass. 288; 1 Greenleaf Ev. 281 and Cases cited; Chitty Contr. 519, 527; 11 Wheaton 258; 3 *id.* 104; 1 Story C. C. 109; 9 Ins. Law Jour. 13; Civil Code L. C., § 2501.

**665.** If an insurance policy containing a clause prohibiting the carrying on of any *illegal* business upon the premises insured, such policy is voided if the premises be used *habitually*

for the keeping of intoxicating liquors with intent to sell, whether the fact be known to the owner of the premises or not.

98 Mass. 288; 9 Ins. Law Jour. 13.

On the other hand, it has been held "that the insurance attaches only to property, and the risks insured against are not the consequences of illegal acts, but of accident" to the property. (12 Mich. 124.)

**666.** Where a policy required proof of occupancy at the time of the fire, which showed the building was used as a hotel, but no license had been procured to keep it as a hotel, as was required by law. In the memoranda of hazards annexed to the policy "all unlawful business" was prohibited. Held: "That an action could not be maintained on the policy."

#### MUST BE VALID.

**667.** The contract upon which the insurable interest is based must be a *valid* one, made according to law, and which can be enforced, or an insurance will not be sustained.

1 Arnould Ins. 722; 6 Mees & Welby 224; 4 Binney Pa. 529.

#### OTHER (OR DOUBLE) INSURANCE.

**668.** As many several and distinct insurances may exist upon the same property as there may be separate *insurable interests* connected therewith, without creating "other insurance" necessitating contribution. (**991.**) (25 U. C. Q. B. 400; 3 U. C. C. P. 407.) Some policies hold *all* other insurance on the same subject, by any party in interest, as co-insurance. (**1894.**) For authorities see **990** et seq.

INSURABLE INTERESTS, when not absolute, may be designated as follows:—

#### I.

**669.** As connected with the right of possession of property, or of the equity of redemption therein, or a reversionary interest in an estate.

Such are the interests of the following:

**670. MORTGAGOR:** Who has an interest in the property as long as his equity of redemption remains, or he may be liable for the debt. (**748, 1723.**)

He may insure in his own name, and recover the full value of the property, unless restricted by the terms of the policy.

2 Peters U. S. 25; 13 Mass. 96; 2 Pick. Mass. 249; 10 *id.* 40; 43 Ill. 327; 9 How. N. Y. 508; 25 N. H. 200; 30 *id.* 231; 3 Denio N. Y. 254; s. c. 1 Comst. 290; 6 Cush. Mass. 342; 1 Adm. Mass. 311; 3 *id.* 362; 8 Paige Ch. 436; 3 Port. Ind. 389; Civil Code L. C., § 2016 *et seq.*

**671.** An EQUITY OF REDEMPTION is the right which equity gives to a mortgagor, or his assignee, upon purchase or otherwise, of redeeming the mortgaged estate after foreclosure and sale. It is considered to be the real and beneficial estate, tantamount to the fee at law; and it is accordingly held to be descendible by inheritance, divisible by will, and alienable by deed, precisely as if it were an absolute estate at law; and this interest continues until foreclosure. (1434, 1726.)

6 Pick. Mass. 76; s. c. 19 *id.* 81; 10 *id.* 40; 18 *id.* 523; 10 Conn. 243; 3 Met. Mass. 81; 21 Me. 104; 7 Watts Pa. 475; 15 Ohio 467; 1 Caine's Cas. N. Y. 47; 4 B. Monroe. Ky. 429; 1 Wash. Real Prop. 544; 4 Benn F. I. Cases 725; 51 Me. 69.

**672.** PLEDGOR OR PAWNER: The owner of any subject pledged, for security of a debt, and so insured, has an interest in the policy of the pledgee though he is not directly, by express terms or by description in the policy, a party to it. A pledge always imports a transfer or delivery of the thing pledged.

He also has an insurable interest to the full value, so long as the right of redemption remains.

Jones' Bailment 117; 6 Fred. N. C. 809; Parsons Cont. 591; 1 Ves. Ch. 278; 2 Taunt. 268; 15 Mass. 389, 534; 4 Denio N. Y. 227; 1 Stock. N. J. 667; Civil Code L. C., § 2018.

**673.** VENDEE: Any interest, inchoate or equitable, held under a valid executory contract, and while such contract exists, is an insurable interest to its full value, though the purchaser may not have obtained possession, actual or constructive; *provided*, the destruction of, or injury to, the property would not affect his liability to the vendor.

If he has paid the purchase money, or expended anything upon the subject insured, he has a *direct* insurable interest in the nature of an equitable ownership, without regard to his liability to the vendor.

A purchaser, liable for the price of goods, has an insurable

interest in them to their full value, after as well as before they may be stopped *in transitu*. (683.)

1 Wend. N. Y. 85; 12 *id.* 507; 16 *id.* 385; 3 Sumner 132; 2 Peters U. S. 25; 5 *id.* 151; 5 Sneed Tenn. 139; 2 Dutch. N. Y. 541; 16 U. C. Q. B. 314; 8 Wr. Pa. 200 88 Pa. 107; 102 *id.* 568; 65 Ill. 415; 29 Conn. 10; 21 Ohio 176; 54 N. Y. 668; 77 *id.* 65; 8 Ins. Law Jour. 134; 1 Phillips Ins. 108, 116, and authorities cited; 16 Ins. Law Jour. 129.

**674. DEBTOR:** A debtor has an insurable interest in the subject under execution or other judgment lien, as long as the equity of redemption remains in himself (671), or if there be any remaining interest after payment of the debt.

The attachment or arrest of goods, or other subjects, at the suit of a creditor on mesne process, or a seizure on execution to satisfy a judgment, does not deprive the owner of his interest, or diminish it, until a legal, absolute sale and transfer of the property is made. (683.)

An insolvent debtor retains an insurable interest in goods concealed from creditors.

5 Pick. 76; s. c. 19 *id.*; 2 L. I. Exch. 109; 7 Wells. H. and Gord. Exch. 323; Eng. L. & Eq. 503; 13 Gray Mass. 431; 1 F. & F. 276; 16 Ins. Law Jour. 227; 7 U. C. C. P. 215, 234.

**675. REVERSIONER:** A reversionary interest is a vested right or estate by operation of law, and not by deed or will; hence, one having such an interest in property, after some particular estate is determined, has an interest in the preservation of such property, which is insurable.

2 Grat. Va. 408; 3 Ins. Law Jour. 371, § 20.

**676. DEVISEE or LEGATEE:** Has an insurable interest in an estate only after the death of the testator. The bare possibility that a right to property might hereafter arise, cannot be considered an insurable interest.

An *expectation* may, in some cases, be insured against certain risks, by a policy particularly specifying its nature.

1 Arnold Ins. 262; 2 Bow. & Pull. 323; Angell Ins., § 18; Cowper R. 598;

**677. PARTNER:** A partner in a firm, when equally interested with his co-partner, and largely in advance to the partnership

concern, has an insurable interest in the entire stock to its full value. (1379.)

13 Mich. 202; 2 Caines. N. Y. 203; 2 Johns. Cases 329; 15 Wend. N. Y. 187; 4 Cow. N. Y. 282; 2 Duer Ins. 22, 24.

A *stockholder*, in a corporation, has no insurable interest in the real or personal property of such corporation, as owner. (20 Ohio 174.) But having a qualified interest in the property of the corporation, he may insure the corporate property, for his own benefit, to the extent of his interest as a stockholder. (31 Iowa 464.)

**678.** A MARRIED WOMAN, *Femme Covert*, owning the fee to premises, may insure a building thereon in her *own name*, notwithstanding the fact that her husband has the right, during marriage, to occupy the property jointly with her, and has a life estate therein. Nor will a policy to her, upon her property, be rendered void by the sale of the property or a portion of it by her husband without her consent. (603.)

57 Ills. 53; 63 Md. 496; 65 *id.* 245; 17 L. J. 27; M. C. R. 1; S. C. 395. The right of married women to hold property will be controlled by the laws of the respective States. Civil Code L. C., § 2472; *Rousseau v. Royal Ins. Co.*, M. L. R. S. C. 395

## II

**679.** Interest without ownership as connected with property through a mortgage or other lien thereon.

**680.** It is held that whatever be the *form* of conveyance to secure a debt, it is treated in equity as a mortgage. And any conveyance that equity will treat as a mortgage leaves an insurable interest.

Such is the interest of the following, namely:—

**681.** MORTGAGEE: Whose interest is in the property to the amount of the debt secured by the mortgage upon the property. Such interest is insurable to the full value of the debt. (758.)

2 Wend. 504; 16 Peters U. S. 495; 5 Pick. Mass. 33; 21 U. C. C. P. 291; 8 *id.* 415; 25 U. C. Q. B. 400; 10 L. C. R. 8; 5 Johns. N. Y. 258; 10 *id.* 741; 12 *id.* 146; 4 L. C. J. 57; *id.* 10 L. C. R. 8; Civil Code L. C., § 2571.

**682.** VENDOR or SELLER: Who has an equitable interest in

the property sold to the amount of the purchase money unpaid upon the contract, or as long as he retains the legal title. Such interest is insurable.

Property sold, and left with the vendor as collateral security, gives such vendor an insurable interest in such property to the amount of his demand. (684.)

16 Wend. N. Y. 385; 1 Philips Ins. 110; 16 Ves. Ch. 329; 16 Ins. Law Jour. 129.

**683.** In most cases, the possession of the carrier is considered that of the vendee; but when goods have been sold on credit, and delivered to the carrier for transportation, they are still subject to the vendor's right of stoppage *in transitu*—an extension of the law of lien—at any time before they come into the actual possession of the buyer; and the vendor becomes reinvested with his original right of possession, as a pledge for the price of his property. Goods in a warehouse awaiting delivery are still *in transitu*, and the vendor has an insurable interest therein. (1211.)

1 Lloyd & W. 100; 1 Philips Ins. 108, 116; 12 Pick. Mass. 313; 8 Mees. & W. 341; 25 Wend. N. Y. 640; Story Contr., § 516; 2 Hall N. Y. 343; 3 Mees. & W. 373; Ottawa Ins. Co. v. Liv. & L. Ins. Co., 28 U. C. Q. B. 518; Gill v. Canada F. & M. Ins. Co., Chy. Div'n., Ontario.

**684. PLEDGEE, PAWNEE:** One who has made advances upon property has a special property in the pledge, and is entitled to exclusive possession during the time and for the objects for which it is pledged; and, being responsible to the pledgor for the proper custody of the property pledged, he has an insurable interest to the amount of his advances, interest and charges, until the property is redeemed.

Story Bail., § 290; 5 Duer. N. Y. 207; 16 N. Y. 397; 15 Mass. 339, 534; 4 Denio N. Y. 227; 1 Stockt. N. J. 667.

**685. CREDITOR:** One having a judgment or other lien upon the property, as security for debt, has an insurable interest therein.

9 Ser. & R. Pa. 103; 1 Philips Ins. 213; 14 Md., 285; Civil Code L. C., § 2571

A creditor, merely as such, has no insurable interest in the property of his debtor; but a creditor to whom goods are as-

signed as collateral security has an insurable interest in them to the amount of his debt.

11 Paige Chy. 118; 5 Pick. Mass. 33; 1 Hall N. Y. 84; Clark v. Scot. Imp. Ins. Co., 4 S. C. R. 192.

When goods are consigned by a debtor with orders to consignee to pay the proceeds to a creditor, such creditor has an insurable interest in the property of his debtor in hands of consignee. **684.** (1 Bos. & Pull. 315.)

A *general creditor* of an estate of one deceased, whose personal property left is insufficient for the payment of his debts, has an insurable interest in the sole real estate of deceased debtor, when it is plain that, if it be damaged by fire, a pecuniary loss must ensue for the creditor thereby.

4 Ins. Law Jour. and authorities there cited; 22 L. C. J. 105; 3 R. P. 435.

**686. MECHANIC'S LIEN:** This *lien* is created by law as a security for the price and value of the work performed and materials furnished by the mechanic. As such it exists on the land and on the buildings erected thereon. It is something more than a mere claim to a *lien*; it is *de facto* as much of a *lien* or security before judgment as a mortgage is a *lien* prior to foreclosure. The holder of such a *lien* has an insurable interest to the full value of the *lien*. **(661.)**

22 Ala. 168; 12 Iowa 271; 19 *id.* 364; 15 B. Monroe, Ky. 411; 14 Md. 285.

### III.

**687.** As having the right to and enjoyment of the usufruct of property.

A party having the rightful possession and use of a thing under an agreement to pay all losses and repairs has an insurable interest commensurate therewith; but the mere use of property is not insurable in the name of the non-owner. **(1001, 1124.)**

1 Philips Ins. 218; Bunyon Ins. 1st. Ed. 8, 16, 18; 3 Mass. 133; 13 *id.* 267.

**688. LESSOR:** One having an interest in rents of property, either as owner, lessee or sub-lessee, has an insurable interest to the extent of the rents accruing therefrom. **(268.)**

**689. LESSEE:** Has an insurable interest in his lease for occupancy, either for his own purposes, or in the increased amount

which he may, as sub-lessor, receive from rents from others. He has no interest in the building leased; but if the leasehold be upon land, he can erect a building thereon, and will be the absolute owner thereof, and may insure it as his own, and recover full value thereof if burned, up to the amount insured; the amount of loss being predicated upon the cost of replacement (2793.)

7 Ins. Law Jour. 650; 1 Hall, N. Y. 40; 1 Sandf. N. Y. 551; 18 U. C. Q. B. 130.

**690.** A *lessee* holding over after expiration of his lease is in law a *tenant-at-will*; or, after payment of rent, a tenant from year to year, holding upon the terms of the expired lease as far as applicable; he has an insurable interest as a *tenant*.

1 Vesey Jr. 318; Bunyon F. L. 18.

**691.** TENANT: A *tenant* for a year may insure his interest in the demised tenements, but he can recover only to the value of the lease "*for occupancy*."

1 Sandf. N. Y. 551; Civil Code L. C., § 1629.

He can also insure, in certain cases, improvements or "*betterments*" put upon the premises at his own cost. (718, 836.)

11 Me. 482; 23 *id.* 110; 13 Vt. 533; 17 *id.* 100; 1 Ohio 511; 13 *id.* 308; 10 Yerg. Tenn. 477.

A *tenant* who pays no part of the premium has no interest in a policy effected by the landlord on the leased premises, unless, it be so agreed. But, if the *tenant* pay any of the premium, he has an interest in the policy. (1 Philips Ins. 212; 9 Pa. St. 198.)

**692.** TENANT FOR LIFE, *Cestui que vie*: Or, a life interest in property. A *tenant for life* has a freehold interest in lands the duration of which is confined to the life or lives of some particular person or persons, on the happening or not happening of some uncertain event; such interest is insurable, and its value, in case of loss, is to be estimated by the ordinary life tables.

2 Grat. Va. 408; 30 Me. 414; Washburn Real Prop. 7, 88, 95; May Ins. § 85; 3 Ins. Law Jour. 928; 4 *id.* 611; 7 *id.* 632; 2 Black. Comm. 330; Caldwell v. Stadacona Ins. Co., 11 S. C. R. 212.

**WIDOW'S DOWER INTEREST:** Dower is an estate for life of a widow in the lands and tenements of her deceased husband, and is such an estate and interest as she can hold and enjoy for life,

or, at her option, release and discharge to such persons as are interested in the fee of the realty.

20 U. C. C. P. 179; 10 Mass. 313; 7 H. & J. Md. 346; 3 Md. Ch. 71; 48 Me. 428; 82 N. Y. 188; Civ. Code L. C., §§ 1426, 1427.

**693. TENANT BY THE COURTESY:** A husband who, under certain circumstances, after the death of his wife, has a life interest in her estate. He may insure her personal property in his own name, while she still lives. **(678.**

He may, as *tenant by the courtesy*, make valid insurance upon the wife's real property, to its full destructible value, describing it as "his" estate, without specifying his interest, or the capacity in which he insures, the policy being silent.

2 B. Monroe, Ky. 47; 50 Pa. Sta. 41; 30 Me. 414; 1 Philips Ins. 184, 249; 18 La. 431; Civil Code L. C., §§ 1290 *et seq.*; *Caldwell v. Stadacona Ins. Co.*, 11 S. C. R. 212.

**694. EARNINGS AND PROFITS:** One having an insurable interest in property may insure also the prospective earnings or profits likely to grow out of that property; but these interests must be covered specifically as such **(264, 265a)**, and usually at a valuation.

Angell Ins. 131, 132; Park Ins. 267; 1 Philips Ins. 122, 161, 191, 239; 1 Arnould Ins. 201, 204; 3 Bos. & Paul. 102; 2 *id.* 75, 315; 1 Sandf. 551; U. S. C. C., D. La.; 4 Ins. Law Jour. 503.

**695. CESTUI QUE TRUST, or BENEFICIARY:** One holding a beneficial interest in and out of an estate, the legal title being vested in another. As such he has an insurable interest to the amount of his interest in the estate.

In a policy by a trustee, on trust property, *cestui que trust*, being the equitable owner, has an equitable interest in the policy.

Wash. Real Prop. 163; 1 Philips Ins. 214; 17 Ves. Jr. 257.

#### IV.

**696.** When holding the control of property of others for specific uses and trusts.

Such are the interests of the following:

**697. EXECUTOR:** One having the control of the property of a decedent, under a will. He may insure in his own name, even before the probate of the will.

5 Barnew & Ald. 745; Williams Exec. 175; 3 Atk. Ch. 300; 4 Young & Coll. 221; 5 Gray Mass. 341; 29 Pa. St. 265; Civil Code L. C., § 916 *et seq.* for decisions.

**698.** ADMINISTRATOR, *Adminstratrix*: One having control of property of an intestate decedent, by appointment of the surrogate or other proper officer. In the prosecution of his trust he acquires a legal property in the assets of the intestate, incident to his office; and, being liable for the management of the property, and having possession and control, he may insure it.

6 Yerg. Tenn. 167; 11 Viner's Abridg. 358; 2 Ves. Ch. 267; 5 Conn. 19; 10 Ired. N. C. 263; 20 Barb. N. Y. 91; 27 N. Y. 163; Civil Code L. C., § 921.

**699.** GUARDIAN; CURATOR: One having legal charge of the estate of an orphan minor, by appointment of court. From the nature of the trust, he may insure the real property of his ward.

Reaves Dom. Relat. 311, 320; 1 Johns. Ch. N. Y. 90; 2 *id.* 439.

**700.** ASSIGNEE: One to whom an assignment has been made, as one having in charge the property of an insolvent debtor. From the nature of the trust, he may insure himself against loss by fire. (**1060.**)

An *assignee* of any subject, for a valuable consideration having a *lien* upon it, and possession or control and disposition of it, may insure it under a general description, without specifying his interest, the policy being silent.

2 Sumn. C. C. 345; 10 Paige Ch. N. Y. 7; 1 N. Y. 101.

**701.** SHERIFF; CONSTABLE: Holding property under execution, may insure it; the proceeds, in case of loss, being held in trust for the party in interest.

26 N. Y. 117; Civil Code L. C., § 1485.

**702.** RECEIVER: One appointed by a court to receive rents and profits on lands, or the product of property in dispute. Having possession, and being responsible for property lost or injured from negligence, and liable for damages, he may insure to the full value of the property. His powers are limited within the jurisdiction of the court by which he is appointed.

1 Johns. Ch. N. Y. 57; 3 Abb. Pr. N. Y. 235; 2 Duer N. Y. 652.

**703.** TRUSTEE: One holding the right of property, real or personal, for the benefit of another, under a deed of trust, or by appointment of a court; he is, in law, generally regarded as the owner of the property. (**1197.**)

5 Wall. U. S. 509; 1 Philips Ins. 219; 45 N. Y. 454; 27 *id.* 163; 3 Kent Comm. 311, 418; 5 Paige Ch. N. Y. 46; Civil Code L. C., § 981a.

**704.** A *trustee* having the title to property, and possession and management of it, may insure in his own name, without specifying his interest, to its full value, the policy being silent as to ownership.

Either or all of the above-named, being *trustees* to a certain extent, having possession and being liable for the due care and safety of the trust property, may insure and recover the full value in their own names, or as "executors," "administrators," etc., for the use of the several estates in trust. (709, 711.)

## V.

**705.** When one is so connected with property, either by contract or by rule of law, that he becomes liable to indemnify the owner in case of its injury or destruction by certain perils, while in his custody.

Such is the interest of the following:—

**706.** COMMON CARRIER: One who transports property for others for hire. He has an insurable interest in the subject transported, when the freight or pay for such transportation depends upon the safety and delivery of the articles, to the amount of the stipulated pay. Such interest may be insured without specifying the particular interest to be covered. (1354.)

**706a.** A *common carrier* may be reinsured against certain risks, subject to the conditions of the original insurance. (1024.)

N. Y. Code, § 1368; 3 B. & Ad. 478; 1 Philips Ins. 166, 220; Civil Code L. C., § 1672 *et seq.*

**707.** WHARFINGER: One who owns or keeps a wharf or dock, and, as such, receives goods and wares for storage or shipment, for hire. He is not, like a *carrier*, to be considered an insurer, unless he superadd the character of *carrier* to *wharfinger*. He has a *lien* upon all goods in his possession for the balance of his accounts. Such *lien* is insurable to its full value.

2 Barb. N. Y. 328; 4 Ind. 368; 4 Camp. 6, 225; 7 Cow. N. Y. 497; 6 id. 757; 1 Mees. & W. Ex 174; 14 id. 28; Civil Code L. C., § 5545.

**708.** WAREHOUSEMAN: One who receives goods and mer-

chandise for storage in his warehouse, for hire. His liability commences as soon as the goods arrive at his warehouse. He has a *lien* upon the goods stored for freight and charges paid, or advances made, or for storage. Such *lien* is insurable. (1875.)

Story Bailm., § 444 ; 7 Cow. N. Y. 497 ; 12 Johns. N. Y. 232 ; 2 Wend. N. Y. 593 ; 4 Espin. 232 ; Civil Code L. C. § 5545.

**709. BAILEE, or DEPOSITARY :** One who has temporary possession of, and a qualified property in goods for the purposes of *trust* ; and when liable by law or by contract for certain risks, whereby the subject bailed or deposited may be damaged or lost, has an insurable interest, in respect to such risk, to the full value of the property ; holding any surplus, in case of loss, as *trustee* for the owner. (1224.)

Story Bailm., § 2 n ; 2 Black. Comm. 451 ; 2 Kent's Comm. 395, 451.

**710. INNKEEPER :** His liability is a special one, arising from the obligations imposed at common law by his occupation. The amount of liability must depend upon special circumstances. But, in event of fire, if goods be stolen in removal, he would be responsible for them. Hence, he possesses an *insurable interest* in the goods of his guests,

2 Kent's Comm. 594 ; Story Bailm. 465 ; 2 Pars. Contr. 146 ; Civil Code L. C., § 1814.

## VI.

**711.** Where parties other than dealers, having no ownership in property have a *lien* upon it, or such an interest connected with its safety as will cause them to sustain a direct loss from its destruction. Or, where one has taken property of another at his own personal risk ; or has agreed to keep it under insurance for the benefit of the owner, and who will be liable for any loss by fire thereon if he fail to do so.

Such is the interest of the following :—

**712. AGENT :** One who transacts business for another for hire. Having a particular right of *lien* for all of his necessary commissions, expenses, advances, and services in and about the property intrusted to his agency, he has always an insurable interest to the amount of his *lien* ; and when, by the usage of trade or the general course of business, he is authorized to act as owner or principal, and has possession of the property, he can

insure to the full value in his own name; unless the stipulations of the policy require otherwise.

**712a.** A mere *agent*, without possession or lien, has no insurable interest; hence, the beneficial owner cannot take advantage of insurance effected by an *agent in his own name, under such circumstances*, such contract being simply void. (1317, 1338.)

3 B. & A. 478; 2 Am. Lead. Cases 437; 1 Mann. & Gr. 130; 5 Ell. & B. 870; 51 Me. 198; Civil Code L. C., § 1735 *et seq.*; O'Connor v. Imp'l. Ins. Co., 14 L. C. J. 219.

**713.** FACTOR: One employed to sell goods or merchandise consigned to him by or for his principal, for a compensation. He may buy or sell for his principal, in his own name, as well as in the name of his principal. He is allowed a *lien* on the proceeds of goods sold as well as on the goods themselves. Hence, he may not only insure to the amount of his *lien*, in way of advances, expenses, and commissions; but he may insure, and recover for the goods in his custody to their full value, in his own name, holding any surplus above his *lien* in trust for his principal under the restrictions of the policy. (1205.)

A *factor* is a mercantile *agent* for sales and purchases, who has possession of the goods. An *auctioneer*, in possession of property, stands as a *factor*. At common law he is agent for both buyer and seller.

Angell Ins. 497, 510; 2 B. & A. 143; Russell, Fact. & Brok. 2, 3; 34 Barb. 454; Civil Code L. C., § 1735 *et seq.*; 1 Arnould Ins. 145; Cusack. v. Ins. Co., L. C. J. 97.

**714.** A BROKER is such *agent*, but without possession of the goods. Hence, while a *factor*, having possession of the goods and quasi ownership, may act for his principal in his own name, a *broker*, not having possession of the property, must act only in the name of his principal. (792.)

26 Wend. N. Y. 341; 33 Wis. 334, 351; 14 N. Y. 85; 5 *id.* 229; 34 *id.* 417; 2 Calves. N. Y. 139.

**715.** CONSIGNEE: One to whom consignments are made for sale. A *consignee*, having possession and a *lien* upon property for advances or otherwise, may insure it in his own name

generally, without specifying the interest, unless there be a provision in the policy to the contrary. But he has not in all cases, as *consignee*, an insurable interest, on his own account, in the property to its full value; his interest is commensurate only with the loss he may sustain by the destruction of the property. Such interest is insurable. (708. 1227.)

5 B. & A. 171; 3 Burr. 1512; 3 Mass. 133; 13 id. 267; 5 Mees. & W. 300.

**716. COMMISSION MERCHANT:** One who buys and sells for others for a commission. He has an insurable interest to the amount of his commissions, and other *liens* on goods consigned to him for sale, from the time of such consignment; and may, like a *factor*, having possession of the goods, insure the same generally in his own name, unless the stipulations of the policy require the ownership to be stated. (1227.)

26 Wend. N. Y. 367; 4 N. Y. 497; 7 id. 288; 5 Hill N. Y. 395; 2 Duer N. Y. 227; Metc. Mass. 380.

**717. Vendor of "GOODS SOLD BUT NOT DELIVERED."** When the owner has sold the subject, agreeing still to stand insurer in respect to certain risks, for a certain period, under his then subsisting policy (covering under the above clause), such agreement will constitute a sufficient still subsisting insurable interest under such a policy. (1205.)

1 Hall N. Y. 84; 46 N. Y. 606; Calif. Civil Code, § 2589; 1 Duer Ins. 54 n; 1 Philips Ins., §§ 89, 91.

**718. UNDERWRITER:** An underwriter, by subscribing a policy, acquires no property in the subject insured, yet he does acquire an insurable interest therein; and having rendered himself directly *liable* to loss from certain perils, he may stipulate to be indemnified against those perils. His interest, however, exists only in relation to the perils insured against in the original policy. (1028.)

Angell Ins. 20, 138, 139; 6 Roberts 316; 17 Wend. N. Y. 359; 1 Sandf. N. Y. 137; 2 Const. N. Y. 235.

**719.** In a fire policy in favor of a *consignee*, *factor*, or *commission merchant* having a *lien*, the calculation of the amount of the *insurable interest* must depend upon what

interest appears by the contract to be *intended* to be insured, or which may, by the terms of the policy, be covered.

**720. VOLUNTEER INSURANCE:** One is held to be an agent for another, when he volunteers to act without any authority so to do, when such other party recognizes his agency. A second party may ratify an act done for him by another, at any time, while he might still do the act as principal, but not afterwards. The law will presume, nothing appearing to the contrary, that every person accepts that which is for his own benefit, the general *maxims* being "that a subsequent ratification is equivalent to prior authority," and "tacit permission is equivalent to an express authority, and supersedes the necessity of a subsequent adoption." (1334.)

11 East. R. 620, 623; 13 *id.* 271, 280; 2 Parson's Ins. 417, 435; 4 Johns. N. Y. 84; 3 Mass. 132; Broom Leg. Max. 836; 2 Duer Ins. 15; 9 Barr. Pa. 198; 2 Maule & Sel. 485; 1 N. Y. 433; 3 *id.* 131; 14 R. I. 149; 13 Q. L. R. 4; 6 L. C. J. 97; Civil Code L. C., § 2474.

**720a.** When one without order or authority effects insurance intended partly or wholly for another, in a form available to him and applicable to his interest, such other has an election to be a party to such policy, or to decline it. But he will become a party *after notice*, and as such liable for the premium, unless he declines to be so without unnecessary delay. It must then be the entire act; a supposed principal cannot adopt a part for his own benefit and repudiate the rest of the supposed agency. (935.)

2 Johns. Cases 125, 424, 300; 15 N. Y. 577; 16 *id.* 137; 26 *id.* 505; 28 *id.* 64; 30 *id.* 79.

**721. WHOM IT MAY CONCERN:** One may insure in his own name the property of another, for the benefit of the owner, without the latter's previous authority or sanction, and such action will insure the interest of the party *intended* to be protected, upon his subsequent adoption of it, even after a loss may have occurred.

But, before one can recover upon a policy of insurance, he must show that *his property was intended* to be protected by the policy, or that he caused the insurance to be effected for his benefit, or that *it was intended, at the time it was taken*, for

his security. In the absence of positive proof of adoption, the fact cannot be assumed. (1233.)

Angell Ins. 134; 9 Barr. Pa. 198; 13 East. R. 274; 1 Phillips Ins. 202, § 388; Hughes Ins. 41.

## VII.

**722.** When parties are liable to indemnify others for loss or injury to property, caused by themselves or their employees, or resulting from accidents, rendering them liable to third parties.

Such are the interests of the following :—

**723.** RAILWAY COMPANIES ; "*Spark Risks.*" A railway company has an insurable interest in buildings, fences and forests, along the line of its roads, which may be liable to take fire from the sparks emitted by their locomotives ; and for which injury the company would be obliged to indemnify the owners, unless it had taken every reasonable precaution against such dangers.

98 Mass. 420; 59 Me. 430; 32 N. Y. 339; 49 *id.* 421, reversing 35 N.Y. 310; 62, Penn. St. 353; 13 Metef. Mass. 99; 42 Mo. 479; 37 Me. 92; 40 *id.* 579; 38 N. Hamp. 242; 2 Peters U. S. 25; 2 Benn. F. I. Cases 560; 39 Md. 115, 149, 251.

But they must be covered as their interest may be, and not as owners. (3 Ins. Law Jour. 608.)

**724.** In some of the Eastern States, Maine and New Hampshire, particularly, there are statutes providing that railway companies shall have an insurable interest in any building or other property, along the line of their several roads, to the extent of any loss by fire communicated by their locomotives ; and this has been held to extend to growing timber within three hundred feet of the line of any road.

37 Maine 92; 40 *id.* 579; 38 N. Hamp. 242; 43 *id.* 627; 13 Metef. Mass. 99; 17 L. R. 367; 15 Q. L. R. 93.

**725.** Where the sparks from a passing locomotive set fire to a woodshed and stable, and sparks from these burning buildings were borne to, and set fire to a house more than fifteen hundred feet away, it was held that the railroad company was liable for the loss. (2 Bennett's F. I. Cases 560.)

**726.** But in another case, where a warehouse near the track was set fire to by locomotive sparks, and communicated fire to a

hotel building thirty-nine feet distant, it was held in the trial court that the railway company was liable for the loss. On appeal to the Supreme Court (of Penna.) this decision was reversed upon the ground that the burning of the hotel was from a secondary cause. The locomotive sparks did not ignite the hotel, they fired the warehouse, and the warehouse fired the hotel; they were the remote cause only. (1660, 1670.)

4 Ins. Law Jour. 398; 62 Pa. St. 363, case cited.

**727.** Chief Justice TINDAL (in the case of *Piggott v. East. Co. Railway Co.*, 3 C. B. 229, 10 Jur. 571) speaking of the responsibilities of railway companies said:—

“The defendants are a company entrusted by the Legislature with an agent of an extremely dangerous and unruly character, for their own private and particular advantage; and the law requires of them, that they shall, in the exercise of the rights and powers so conferred upon them, adopt such precautions as may reasonably prevent damage to the property of third persons through or near which their railway passes.”

**728.** “The evidence in this case was abundantly sufficient to show that the injury of which the plaintiff complains was caused by the emission of sparks or particles of ignited coke, coming from one of the defendant's engines; and there was no proof of any precautions adopted by the company to avoid such mischance. I, therefore, think that the jury came to a right conclusion in finding that the company were guilty of negligence; there are many old authorities to sustain this view.”

3 Man. & G. 575; L. R. 5 C. P. (Exch.) 14; 29 L. J. Exch. 247; 49 L. J. App. Q. B. 428.

**729.** Where it was proved that a railway company “*had resorted to all known means of precaution*” to prevent such accidents, it was held that “they were not liable, as there had been no negligence.”

May Ins. 562, § 459, and the authorities there cited; *Smyth v. R. R. Co.*, Sup. Court. Calif. Aug., 1884.

**730. STEAMBOAT OWNERS:** Inasmuch as steamboat owners are liable for damages caused by sparks from boats having no grille over the chimney, they have an insurable interest under the same contingencies as railway companies.

*Crandall v. Goderich Transp. Co.*, Milwaukee Sup. Ct., Dec., 1884.

**730a.** In an action for property destroyed by fire, where it is claimed that plaintiffs' property was consumed and destroyed by defendant's actionable negligence, it is no defence that

plaintiffs' property was insured for its full value, and that he has received the insurance money. In such case the plaintiffs are entitled to recover their entire loss from the defendant, and the fact that the insurance companies in which the property was insured have paid plaintiffs the amount of such insurance cannot constitute any defence. (135 N. J. [Law] 409; 103 Mass. 219; 105 Mass. 213; 17 Mich. 47; 38 Bart. 589; 37 Ill. 333; 25 Conn. 265; 39 Minn. 255; 71 N. J. 574.) Nor can the payment of insurance money be used in mitigation of damages against the wrongdoer. The insurance is something with which the wrongdoer has nothing to do, and, whether received by the plaintiffs or not, is no concern of such wrongdoer, nor can he have any benefit from it.

1 Luth. on Damages 242; 44 Ind. 184; 59 Ind. 317. *Case of Cunningham v. T. H. & A. Railway Co.*, Sup. Court Ind., June, 1881.

## MORTGAGE INTERESTS.

**731.** "Whatever may be the form of a conveyance to secure a debt, it is held in equity to be a mortgage, and is to be treated as such."

*Holbrook v. American Ins. Co.*, 1 Curtis C. C. 193; *Kinnerly v. Messen*, 5 Taunt. 264; *Fort v. Burch*, 5 Denio 187; *Morgan v. Chamberlain*, 26 Barb. 163.

That there is a material difference, especially in the law of insurance, between a mortgage and judgment lien, is beyond question. Mortgages are in form defeasible, and in substance grants of specific security of interest in lands; but a judgment is a general not a specific lien. If there be personal property of the debtor, it is first to be satisfied out of that; if there be not, then it is a lien on all of his real property, without discrimination.

A judgment, though to secure payment of unpaid purchase money, does not place the holder in a position analogous to that of a mortgagee, and as he retains no insurable interest in the premises, he is not entitled to recover on a policy of insurance.

*Taintor v. Keys*, 43 Ill. 332; *Holbrook v. American Ins. Co.*, 1 Curtis C. C. 198; *Russell v. Southard*, 12 How. 139; *Lazarus v. Com. Ins. Co.*, 19 Pick. Mass. 81.

## MORTGAGE POLICY.

**732.** A mortgage policy may be directly upon the property by the mortgagee, or a mortgage debt may be secured by conditions attached to or inserted in the policy of the mortgageor, making any loss payable to the mortgagee as his interest may appear at the time of the loss. (1070.)

The first form is a security upon the debt where the premium is paid by the mortgagee; in which case the owner receives no benefit whatever from the insurance in case of loss, as the debt still remains unpaid; the want of privity between the mortgageors and insurers is a conclusive objection to the mortgageor's claim to such discharge. (16 Wend. N. Y. 397.) Under this form the underwriter is entitled to be subrogated to the claims of the mortgagee, thus changing the creditor of the mortgageor from the mortgagee to the underwriter. (763.) In the second form the property is the subject of the insurance; the policy protects both mortgageor and mortgagee, as, in the event of loss, the mortgagee collects the insurance money as payee (773), giving mortgageor credit upon the mortgage to that extent; and if there be any surplus it belongs to the mortgageor as the insured, while the underwriter has no right of subrogation, for, the mortgage being paid, there is nothing to which to be subrogated. (1821.)

## MORTGAGEE CLAUSE.

**733.** This clause is a special stipulation, operative only between the insurance company and savings banks, or other money loaning institutions or individuals to which it may be conceded, usually accompanying a mortgageor's policy when loss thereunder is made payable to such parties as mortgagees, and intended as a protection against any acts or omissions on the part of the insured, the mortgageor, by which the insurance might become invalid as to such mortgageor, in which event the policy would continue to cover the interests of such mortgagees, though the insured may have set fire to the premises, or otherwise wilfully caused the loss. Thus, as the mortgageor has no interest in the clause—it not becoming operative until his legal interest in the

insurance shall have entirely ceased—it is difficult to conceive why it should, as in present practice, form one of the stipulations attached to *his* policy, which was not the custom in the early days of the use of this clause, which then, very properly, was considered and treated as a separate transaction altogether.

**734a.** The first use of this clause was by the Mutual Life Insurance Company of New York, early in 1860. It was very exacting upon the Companies, entirely nullifying many of the most saving stipulations of the policy as issued to owners directly. This form soon became common among other loaning institutions, and for many years subsequent, the clause was a source of much vexation and annoyance to the Companies and the Courts as well, until some of the more prominent offices refused to write them. From time to time, however, improvements were introduced into the clause, such as the right of cancellation by the Company, theretofore denied, co-contribution, etc., under which the fact that the Companies had some rights that these grasping mortgagees should respect was recognized. The following is the

NEW YORK STANDARD FORM.

*Mortgagee Clause with Full Contribution.*

**735.** Loss or damage, if any, under this policy, shall be payable to.... as..... mortgagee [or trustee], as interest may appear, and this insurance, as to the interest of the mortgagee [or trustee] only therein, shall not be invalidated by any act or neglect of the mortgageor or owner of the within-described property, nor by any foreclosure or other proceedings, or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; *provided*, that in case the mortgageor or owner shall neglect to pay any premium due under this policy, the mortgagee [or trustee] shall, on demand, pay the same.

INCREASE OF HAZARD.

**736.** *Provided*, also, that the mortgagee [or trustee] shall notify this company of any change of ownership or occupancy, or increase of hazard which shall come to the knowledge of said mortgagee [or trustee]; and, unless permitted by this policy, it shall be noted thereon, and the mortgagee [or trustee] shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

(1110.)

## CANCELLATION.

**737.** This company reserves the right to cancel this policy at any time as provided by its terms; but in such case this policy shall continue in force for the benefit only of the mortgagee [or trustee], for ten days after notice to the mortgagee [or trustee] of such cancellation, and shall then cease, and this company shall have the right, on like notice, to cancel this agreement. (886.)

## CONTRIBUTION CLAUSE.

**738.** In case of any other insurance upon the within-described property this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property, issued to or held by any party or parties having an insurable interest therein, whether as owner, mortgagee, or otherwise. (1982.)

## SUBROGATION.

**739.** Whenever this company shall pay the mortgagee [or trustee] any sum for loss or damage, under this policy, and shall claim that, as to the mortgagee or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt; or may, at its option, pay to the mortgagee [or trustee] the whole principal due, or to grow due on the mortgage with interest, and shall, thereupon, receive a full assignment and transfer of the mortgage, and of all such other securities; but no subrogation shall impair the right of the mortgagee [or trustee] to recover the full amount of .....claim. (1831.)

**740.** It will be noted that under the first paragraph, the insured mortgagee's acts of commission or omission, *after* the issue of the policy, be they fraudulent or otherwise, will not prevent recovery by the mortgagees should loss occur, for which important concession and abrogation no compensation is demanded in the way of extra premium for the extra risks assumed; a concession, by the way, accorded to no other class of insureds. (773.)

The following is the form of the

## FIRE UNDERWRITERS ASSOCIATION OF CANADA.

**741.** *It is hereby provided and agreed,* that this insurance, as to interest of the mortgagees only therein, shall not be invalidated by any act or neglect of the mortgagee or owner of the property insured, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy.

**742.** *It is further provided and agreed,* that the mortgagees shall at once

notify said company of non-occupation or vacancy for over thirty days, or of any change of ownership or increased hazard that shall come to their knowledge; and that every increase of hazard, not permitted by the policy to the mortgageor or owner, shall be paid for by the mortgagees on reasonable demand from the date such hazard existed, according to the established Scale of Rates, for the use of such increased hazard during the continuance of this insurance.

**743.** *It is also further provided and agreed,* that whenever the company shall pay the mortgagees any sum for loss under this policy, and shall claim that as to the mortgageor or owner no liability therefor existed, it shall at once be legally subrogated to all right of the mortgagees under all the securities held as collateral to the mortgage debt, to the extent of such payment, or, at its option, the company may pay to the mortgagees the whole principal due or to grow due on the mortgage, with interest, and shall thereupon receive a full assignment and transfer of the mortgage, and all other securities held as collateral to the mortgage debt, but no such subrogation shall impair the rights of the mortgagees to recover the full amount of their claim.

**744.** *It is also further provided and agreed,* that in the event of said property being further insured with this or any other office, on behalf of the owner or mortgagee, the company, except such other insurance when made by the mortgageor or owner shall prove invalid, shall only be liable for a ratable proportion of any loss or damage sustained.

At the request of the assured, the loss, if any, under this policy is hereby made payable to \_\_\_\_\_ as \_\_\_\_\_ interest may appear, subject to the conditions of the above "**Mortgage Clause.**"

This clause, though not as formal and precise as that of the New York policy, yet covers the same grounds, and is liable to the same objections, which readily suggest themselves to any fire underwriter. (773.)

**744a.** These "mortgagee clauses" are distinct waivers of the conservative stipulations of the policy; the property may be sold and resold, or burned by the mortgageor during its currency, but the liability of the underwriter still remains; and just why such special "concessions" should be made to "money-lending institutions," to protect *their interests* when they are the very last to make "concessions" to others, is one of the "mysteries" of the business, especially when the effect of such concession is to debar the underwriter from the benefit of the saving conditions of his policy in cases of fraud, or other voidable circumstances on the part of the mortgageor, without any corresponding benefit to himself in the way of extra premium or otherwise for such concession.

## CHATTEL MORTGAGE.

**745.** A chattel mortgage is a lien upon personal property secured by mortgage; such liens are treated in law like other mortgages.

**746.** Plaintiffs sold their stock to C, and took a chattel mortgage for the purchase money. Sundry other articles, the property of C, were included in the mortgage. At the time of the sale the sheriff held executions against the property of C, covering his goods set out in the mortgage:—

HELD: "That the acceptance by the plaintiffs of a mortgage on goods which they knew belonged to C, though already bound by the execution, as they were aware, rendered the whole transaction void and fraudulent against creditors, so that the stock in trade sold by the plaintiffs to C became subject to the executions." (*Cameron v. Perrin*, Court of Appeal, Ontario, 1887.)

**747.** A chattel mortgage is not alienation, so long as the property remains in the possession of the mortgageor. (*Rice v. Tower*, 1 Gray Mass. 426.)

*Appleton Iron Co. v. British America Ins. Co.*, S. C. Wis. 1878, 8 Ins. Law Jour. 177; *Hibbard et al. v. Hartford Fire Ins. Co.*, S. C. Iowa, 1 Ins. Law Jour. 178; *Ogden v. Montreal Ins. Co.*, 3 U. C. C. P. 497; *Driver v. McLaughlin*, 2 Wend. N. Y. 599; *Rowley v. Rice*, 11 Metes Mass. 353; *Pettis v. Kellogg*, 7 Cush. Mass. 456; *Excelsior F. I. Co. v. Royal Ins. Co.*, C. A. N. Y. 1878, 3 Ins. Law Jour. 350.

## THE MORTGAGEOR.

**748.** A mortgageor's interest is in the property until foreclosure; or so long as his right of redemption continues. Even after he has sold the property subject to the mortgage, he will still retain an insurable interest, as he will be liable to the mortgagee for any injury that may occur to the mortgaged estate, and thus diminish its value as security; such interest must be stated in the policy.

*Columbia Ins. v. Lawrence*, 2 Peters 25; *Gordon v. Mass. Ins. Co.*, 2 Pick. Mass. 249; 10 *id.* 523; 32 Md. 421; *Aurora F. & M. Ins. Co. v. Hopkins Mfg. Co.*, S. C. Mich., App., 1882.

**749.** "Where the owner of property executes a mortgage thereon, and assigns the policy to the mortgagee, as collateral to the mortgage, with the consent of the insurer, the assignee takes subject to the conditions expressed upon its face, or necessarily inhering in it unless otherwise therein agreed, and no recovery

can be had merely in consequence of the equities of the assignee if the assignor has lost the right to recover by violating the terms of the contract." (1060.)

8 Gray Mass. 28; 17 N. Y. 391, 401; 31 Penn. 438; 17 Wis. 387; 53 Ill. 151; 10 Wall. U. S. 33.

**750.** It is the parties insured and so named in the policy, and not those to whom loss may be made payable, who are bound by the terms of the policy; the designation of payment to the mortgagee is not an insurance of mortgagee's interest; he takes it subject to the conditions of its face, and subsequent insurance taken by the mortgageor without consent of the first company will avoid that policy.

Continental Ins. Co. v. Heilman & Cox, S. C. Mich., Oct., 1879, 9 Ins. Law Jour. 91, and authorities cited; 31 Penn. 438; 31 Wall. U. S. 33.

**751.** Where a mortgageor took a policy in his own name, "payable, in case of loss, to mortgagee," and afterwards sold all of his interest in the property to a third party, it was held "That the contract was with the mortgageor and not with the mortgagee; and that the sale of the property divested the mortgageor of all insurable interest, and the mortgagee could not recover." (750.)

5 Ins. Law Jour. 145; 10 Wall. U. S. 33; 42 Me. 221.

**752.** In answer to a question in the application as to incumbrance upon the property, the amount as then existing was stated; an additional mortgage was subsequently executed, and an existing policy assigned as collateral security therefor, it was held that the execution of the latter mortgage, without notice to the company, did not avoid the policy.

People's Ins. Co. v. Spencer, 3 P. F. Smith 353; Eureka Ins. Co. v. Robinson, 6 id. 256; State Ins. Co. v. Tedd, 6 Ins. Law Jour. 893.

*Per Contra:* McCain v. Waterloo Co. M. F. Co., 34 U. C. Q. B. 376; Hawke v. Niag. Dist. Ins. Co., 23 Grant Chy. 139.

**753.** The sale of mortgaged property by a master in chancery, under a foreclosure, terminates the interest of the mortgageor, though no deed has yet been executed. (1 Seld. N. Y. 151.)

**754.** A mortgageor, whose equity of redemption has been seized on execution, may recover the entire value of the building, not exceeding the sum insured, subject, however, to the terms

of the policy. The mortgageor having an insurable interest in the property may sue. (*Crawford v. St. Lawrence Ins. Co.*, 8 U. C. Q. B. 135.) *Per Contra*, N. Y. Sup. Ct. (3 Bosw. 516), a mortgageor cannot sue unless the mortgagee has been paid, which he must allege; but if unpaid, both may join in the suit.

(By oversight in numbering, section numbers 755, 6, 7, were not used.)

#### THE MORTGAGEE.

**758.** *Mortgagee insurance* is a wholly collateral contract, which the law allows the *mortgagee* to make, and with the result of which the mortgageor has no concern.

**759.** A mortgagee's interest is in the debt secured by the property. He cannot be held to cover the specific property mortgaged, but only so much thereof as may be sufficient to satisfy the mortgage debt. In effect, the security only is protected by the insurance, which is limited to the interest specified in the policy, not exceeding the mortgage debt. If the debt be paid before the loss, the mortgagee's interest in the policy ceases from lack of interest upon which to attach.

3 Dowl. Ex. R. 138; 1 B. & C. 657; 16 Peters U.S. 512; 16 *W.* 495-501; 8 *Paige Chy.*, N. Y., 437; *Richardson v. Home Ins. Co.*, 21 U. C. C. P. 301, 2; *Barton v. Gore Dist. Ins. Co.*, 12 *Grant Chy.* 167; *Richards v. Liverpool and London Fire Ins. Co.*, 25 U. C. Q. B. 400; *Ogden v. Montreal Ins. Co.*, 3 U. C. C. P. 497; *Mathewson v. Western Assurance Co.*, 4 L. C. Jur. 5; *Fland. Ins.* 360; *May Ins.* 525, 547; 1 *Philips Ins.* 155, § 295.

**760.** A mortgagee may, at his option, insure his interest generally, or specifically; generally when he insures as entire owner, making no mention of the mortgage; or specifically, when the nature of his interest is specified, subject, however, to the specifications of the policy as to title or interest.

**761.** The holder of a mortgage as security for the purchase money may insure his entire interest, and is not bound to look to the land for its value. It is not competent for the insurers, in order to diminish or defeat recovery by the insured, to show that the mortgaged premises, notwithstanding the loss, are still ample security for the debt. (774.)

7 *Cush. Mass.* 1; 6 *Gill and J. Md.* 372; 7 *Barb. N. Y.* 590; 5 *B. and Ad. R.* 1; 5 *Duer N. Y.* 1, affirmed 17 *N. Y.* 428; *Barton v. Gore Dist. Ins. Co.*, 8 *Grant Chy.* 523; 12 *id.* 170; *Crawford v. St. Lawrence Ins. Co.*, 8 U. C. Q. B. 135.

**762.** A lien upon property creates no lien upon any policy held by others upon such property; hence the mortgagee has no claim upon the policy of a mortgageor, and *vice versa*.

*White v. Brown*, 2 Cush. Mass. 412; *Cushing v. Thompson*, 4 Red. Me. 496; May Ins. 6, n 3, for authorities; *id.* 547; 1 Philips Ins. 155; *Columbia Ins. Co. v. Lawrence*, 10 Peters U. S. 507.

#### SUBROGATION.

**763.** The right of subrogation intervenes only when the *interest* of a mortgagee is covered by the policy, and not when the insurance is made upon the *property direct*, by the owner or mortgageor; nor when the mortgageor pays the insurance premium; nor when, by agreement, the premium is to be paid by the mortgagee, and charged to the mortgageor upon the mortgage. (1823.)

*Howes v. Dom. F. I. Co.*, High Ct. Just., Ont., Chy. Division, 1883; 2 Cush. Mass. 412; 7 *id.* 14; May Ins. 80, 82; 3 Ins. Law Jour. 350; *Watts v. Gore Dist. Mut. F. I. Co.*, 8 Grant Chy. 523.

But when the mortgagee takes out insurance upon his mortgage interest, and pays the premium out of his own funds, any money paid upon a loss under the insurance is not in discharge of the mortgage; and the underwriters, on paying the insurance money, will be entitled to subrogation of the security pledged to the amount by them paid. It is, as to the mortgageor, simply substituting one creditor in the place of another—the insurance company for the mortgagee.

5 Duer N. Y. 1; 17 N. Y. 428; 16 Peters U. S. 501; 16 Wend. N. Y. 385; 23 Eng. Law and Eq. R. 79.

**764.** Where the agreement was "that the interest of the mortgagee shall not be invalidated by any act or neglect of the mortgageor, provided that, if the mortgagee fail to notify the insurers of any change of ownership or of occupancy more hazardous after the same shall have come to his knowledge, the policy shall be void:" The property was covered as a dwelling, but was occupied by the owner as a workshop. Held: that the policy was void, as the warranty as to occupancy was a condition-precedent, without compliance with which no recovery could be had. (*Gassner v. Metropolitan Ins. Co.*, 13 Minn. 483.)

**765.** Where the policy to the mortgageor was made payable to the mortgagee, and contained the following stipulation: "It is hereby agreed that this insurance, as to the interest of the mortgagee only therein, shall not be invalidated by any act or neglect of the mortgageor or owner of the property insured, nor by the occupation of the premises for purposes more hazardous than are permitted by the terms of this policy," the company defended upon the ground of fraud in obtaining the policy. The Court held that the above clause provided only against *future acts*; that the defendant did not thereby guarantee the policy to the plaintiffs as indisputable, and therefore they were not debarred from setting up that the insurance had been effected by fraud; also held, that the clause did not amount to a new insurance in favor of the mortgagee. (*Omnium Securitas Co. v. Canada F. & M. Ins. Co.*, High Ct. Justice, Queen's B. Division, Ontario, 1883.)

**766.** This decision fully accords with the first section of the New York Standard form (**735**), also the first of the Canadian Fire Underwriters' form (**741**), both of which provide only for *future acts* of mortgageor after the policy has been written and assigned to the mortgagee.

#### DOUBLE INSURANCE.

**767.** It is an axiom among fire underwriters, that insurances, to be double and contributive, must be upon the same subject, in whole or in part, and for the same parties. Hence a mortgageor policy upon the property at risk is not double insurance with a mortgagee's policy covering the same property, but as security for a debt only. The interests of the two insureds are entirely separate and distinct, and hence not contributive in case of loss to the property. (**732**.)

*Richardson v. Liv. and Lond. Ins. Co.*, 27 U. C. Q. B. 52; *Ogden v. Montreal Ins. Co.*, 3 U. C. C. P. 497.

**768.** A policy of the mortgageor with loss payable to the mortgagee is not mortgagee insurance; the policy still remains that of the owner, the mortgagee being simply the payee in the event of loss thereunder. Hence, where a mortgagee, unknown to the mortgageor, took an insurance in mortgageor's

name, any loss payable to the mortgagee, and the mortgageor, still in ignorance of what the mortgagee had done, took an insurance on his own behalf upon the same property. Held: The equitable right of the mortgagee was liable to be defeated by the acts of the mortgageor; that the party insured was the mortgageor. (1334 *et seq.*)

*Sias v. Roger Williams Ins. Co.*, U. S. C. C., Dist. N. H., Jan., 1880, 9 Ins. Law Jour. 154, and authorities there cited.

**769.** Where a mortgagee covers his interest and a subsequent mortgagee also covers his interest in the same property, in the event of loss, the first mortgagee is not liable to be apportioned with the second insured; but may recover the whole amount insured, if less than the loss or damage to the property.

52 Me. 322, 333; 12 Wend. N. Y. 507; 2 Comst. N. Y. 235; 1 Allen Mass. 63; 4 Benn. F. I. Cases 796; 6 Ins. Law Jour. 437.

**770.** The N. B. & M. Co., and the R. C. Co., issued policies to C. and R. upon a certain woolen mill, with loss payable to, and mortgagee clause attached in favor of the C. P. L. & S. Co., mortgagees. In addition there was a separate contract between the mortgagees and each office providing in general terms that the usual conditions of the policies covering upon property held by them under mortgage should be waived and canceled where they should be found inconsistent with such special conditions, and these special conditions were applicable to such policies. C. and R., the insured, also had policies in five other offices, concurrent with the first named, but not payable to the mortgagees, in the event of loss.

**771.** Upon the occurrence of loss to the property at risk, the five last-named offices paid pro-rata among themselves, holding the first-named two as specific, non-contributing insurances. The N. B. & M. and the R. C., while admitting their liability, claimed co-contribution from the five other offices, covering C. and R. alone; invoking in their behalf the provisions of the Statutory conditions, providing for ratable apportionment of loss on the same subject matter amongst all concurrent insurances, and claiming that these Statutory con-

ditions, the mortgagee clause and the special agreement fixed a liability on them for their ratable proportions of the loss only.

**772.** The mortgagees, on the other hand, claimed that as the loss upon the mills was in excess of the amount of the mortgage, they had separate rights against the two companies, up to the amount of the mortgage, within the amount of those two policies; and that their claim could not be reduced by reason of other insurance to which they had never been assenting parties.

The Vice-Chancellor, after due consideration, decided that the defendant companies were entitled to co-contribution with the other offices. (*Canada Permanent Loan and Savings Co. v. North British and Mercantile and Royal Canadian Ins. Cos.*, High Ct. Justice, Chancery Div., Ontario, 1888.)

**773.** This ruling is in full accord with the preceding decisions. The mortgagee clause and the other special agreements in their favor did not make the Loan Company the insured, nor the policies of the two companies mortgagee insurances; the Loan Company was simply payee to receive the money for any loss that might occur to the mortgaged premises, at least so long as those policies were valid as to C. and R., who were the insured thereunder; hence all of the policies, covering the same parties upon the same risk, became co-contributors to the loss. (**732, 750, 768.**)

#### REINSTATEMENT.

**774.** Where mortgaged premises had been rebuilt after a loss by fire, by other parties in interest, and the mortgagee subsequently brought suit upon his policy: Held, that the contract of insurance was a contract of indemnity; and as the buildings had been restored and the security of plaintiff thereby made as valuable as before the fire, and this had been done before the commencement of the suit, the plaintiff had sustained no loss or damage, and could not therefore recover.

*Matthewson v. Western Ass. Co.*, 4 L. C. J. 57; 10 L. C. S. C., Montreal, 8. *Per Contra*, *Foster v. Equitable Mutual Ins. Co.*, 2 Gray Mass. 216; 16 Peters U. S. 495; 2 Benn. F. I. Cases 125. (**761.**)

## PREMIUM.

**775.** Premium is the "cost" of insurance, the price of, or consideration for, the peril insured against, which the underwriter guarantees in case of accident to the subject of the insurance. The premium paid by the insured and the peril assumed by the insurer are two correlatives, inseparable from each other. "Their union constitutes the essence of the contract."

*Emerigon*, *Meredith's Ed.* 51; 1 *Phillips Ins.* 257; *May Ins.* 406.

### PAYMENT IN ADVANCE.

**776.** "Of right, and by the ordinary meaning of the term, the premium, which is the cost of the insurance, ought to be paid to the insurer in hand." (2 *Valin's Commentary* 47.)

All fire policies include a stipulation for the premium (**162**), usually fixed at a certain rate per cent, upon the sum covered by the insurance. It is made a condition precedent to the insurance taking effect, that this premium shall first be paid to the company or its duly authorized agent, or otherwise specifically waived by them; and inasmuch as the funds arising from premiums are the resources of the company for the payment of losses and expenses, such condition is held by the courts to be valid and obligatory, as the risk assumed therefor by the company is a full, meritorious and solid consideration for the premium paid.

*Brewer v. Ins. Co.*, 13 *Gray Mass.* 203; *Mulvey v. Shawmut Mut. F. I. Co.*, 4 *Allen Mass.* 116; *Buffum v. Fayette Mut. F. I. Co.*, 3 *Allen Mass.* 300; *Flint v. Ohio Ins. Co.*, 8 *Ohio* 505; *Berthoud v. Atlantic Ins. Co.*, 13 *La.* 539; *Bradley v. Potomac Ins. Co.*, 32 *Md.* 108; *Ferebee v. N. C. Home Ins. Co.*, 68 *N. C.* 11; 18 *Vesey* 116; *Jones Ch.* 370; 1 *Hoff. Ob.* 139; 4 *Paige Ch.* 355; 7 *id.* 23; 9 *id.* 21; 1 *Phillips Ins.* 258, § 605; *Montreal Assurance Co. v. McGillivray*, 13 *Moore's P. C. Cases* 87; *Walker v. Prov. Ins. Co.*, 7 *Grant Ch.* 137; affirmed 8 *id.* 217; 5 *U. C. L. J.* 162.

### ACKNOWLEDGMENT OF PAYMENT : EFFECT OF.

**777.** In the customary printed forms of the fire policy the payment of the premium is acknowledged, whether so paid or

not, and imports a settlement of the premium by cash or note, or both, simultaneously with the delivery of the policy. But in the New York Standard policy of recent date, this acknowledgment is omitted. (**480a.**)

Where the policy stipulated that the "insurer shall not be liable under the policy until the premium shall be actually paid to the company," but the policy had been delivered and acknowledged the receipt of the premium, it was held that "the defendant could not be permitted to prove that the premium had never been paid, for the purpose of defeating the rights of the insured." That "the acknowledgment of the consideration could not be contradicted by parol evidence if the object was to make the deed void."

3 Kent Comm. 260; 49 Ill. 180; 35 N. J. 429; 3 Taunt. 493, 497; 4 *id.* 246; 1 Disney O. 217, affirmed 2 *id.* 128; 45 Md. 59; 4 Wis. 20; 10 La. Ann. 737; 1 Camp. 532; 5 Cranch N. Y. 100; 9 Bush Ky. 430.

**777a.** Where the policy had become void from a material misrepresentation, not fraudulent, it was nevertheless held that the policy was conclusive evidence that the premium had been paid. (8 Excheq. R. 425.)

#### ACKNOWLEDGMENT NOT ALWAYS CONCLUSIVE.

**778.** Such acknowledgment of receipt of the premium is not always conclusive. The insurer may recover the premium notwithstanding the formal acknowledgment of the receipt of it in the policy, which is not inserted there as conclusive of the actual payment, but to prevent the necessity of proving it in case of loss.

Carth. 338; Marsh. Ins. 240; 26 N. Y. 117, 240; 38 Cal. 541; 1 Camp. 534; 1 Arnould Ins. 36; 1 Philips Ins. 265, § 515, and authorities cited n. 4.

#### UNDER PAROL AGREEMENT.

**779.** In cases of parol agreements for insurance, prior to the issue of the policy, the usual stipulation requiring payment of the premium in advance of delivery of the policy forms no part of the contract, unless by express agreement. In such cases it is held that the natural course of business would be to pay the premium when the policy should be delivered. In

the meantime it is a debt for which credit is given until the actual delivery of the policy.

10 Bosw. N. Y. 82 ; 2 Ins. Law Jour. 807.

#### QUARTER-DAY PAYMENTS.

**780.** The making fire premiums payable upon the regular quarter-days of the year was a custom in Great Britain as early as about A. D. 1700, the object being to make such payments less burdensome to the insured by dividing them into four parts. The practice ceased, however, about A. D. 1726, but was renewed in A. D. 1782, to facilitate the collection of the percentage duty imposed by government upon all insurance policies and renewals, the collection of which was made obligatory upon the offices at the time of issuing the policies, and for which they accounted to government quarterly, receiving a small percentage for such service. The percentage duty was abolished A. D. 1869, after which time regular quarterly payments were no longer obligatory, although the practice is still maintained to a large extent, especially with annual policies continued year after year ; policies expiring at other dates are now common also.

**781.** These quarterly premiums fall due upon the regular quarter-days, and are payable within the ensuing fifteen "grace days," in England and Ireland, as follows:—

QUARTER-DAYS.	PAY DAYS.
Lady-Day.....	Mar. 25 ... April 9th Ensuing.
Mid-summer.....	June 24 ... July 9th "
Michaelmas.....	Sept. 25 ... October 13th "
Christmas.....	Dec. 25 ... January 9th "

**782.** The proposals for insurance of the Liverpool Office, Jan. 1, 1777, Art. 3, read as follows:—

"On bespeaking policies the persons are to deposit 9s. 6d. for the policy, stamp duty, and mark, and shall pay the premium to the next quarter-day, and from thence for one year or more, at least; and shall, as long as the managers agree to accept the same, make all future payments annually at the said office within fifteen days of the day limited by their respective policies, upon forfeiture of the benefit thereof."

Under this article, all policies taken out between two quarter-days paid for the odd time to the next quarter-day, estimated usually by weeks, in addition to an annual premium; if less than one week intervened no charge was made. Quarter-day

policies had the benefit of the fifteen days grace for payment of premiums, which other policies did not have; nor were the first-named entitled to the grace days when the company declined to renew.

**783.** In Scotland the practice in this respect is the same; the quarter-days are :—

Candlemas.....	Feb. 2.
Whitsuntide.....	May 15.
Lammas day .....	Aug. 18.
Martinmas.....	Nov. 11.

#### DAYS OF GRACE.

**784.** The custom of allowing days of grace after the expiration of the term named in the policy had its origin in a statute (22 Geo. III., c. 48, § 12) for the collection of the insurance duty, which provided that the insured by any fire policy,

“ At the end of the year for which the same was granted, or within fifteen days, and so at the end of every subsequent year, should pay to the insurer one year's duty; the insurer to give a receipt for the same, and in default of payment within the time aforesaid, and *before any loss should have been sustained*, the policy should be void.”

It will be here noted that this avoidance of the policy is made absolute only when the *duty*, not the *premium*, remains unpaid at the end of the days of grace, or the occurrence of a fire loss during the fifteen days. At times, on ordinary risks, this duty exceeded the premiums.

**785.** This clause for a time caused much trouble to the offices, the question being as to their liability should loss occur before the expiration of the fifteen days, when the premium had not been paid. In the case of *Tarleton v. Stanforth* (5 Term R. 695), under a clause similar to that of the Liverpool Company above cited, with the additional provision that “no insurance is to take place until the premium be actually paid by the insured,” a loss occurred within the fifteen days, and the premium had not been paid. The court held that the policy was void by its terms. This ruling created much excitement among the insuring public, to allay which several of the offices issued circulars stating that their policies would be

good up to the end of the fifteen days, thus making the insurance for a year and fifteen days. Several suits were subsequently brought under this clause; but the courts held that, under the effect of this advertisement and the terms of the stipulation, the policies were liable until the expiration of the days of grace.

*Salvin v. James*, 2 East. 571; *Doe v. Sherwin*, 3 Camp. 134; *McDonnell v. Carr*, 1 Hayes & Jones 256; *Pritchard v. Merchants and Tradesmen's Life Ins. Co.*, 4 Jur. N. S. 307; *Simpson v. Accidental Death Ins. Co.*, 2 C. B. N. S. 257; 3 Jur. N. S. 1079.

**785a.** In the American case of *Bradley v. Potomac F. I. Co.*, 32 Md. 108, under a similar clause, where the premium had not been paid, but was tendered within the fifteen days, but subsequent to the loss, Held: "The policy did not attach until payment of the premium, and the company was not bound to accept it after the loss occurred." See also 1 Ins. Law Jour. 443; 5 *id.* 817.

## PAYMENT TO BROKER.

**786.** In England and upon the Continent, insurances, especially marine, are almost universally made through the medium of professional brokers, who assume all responsibility for the premium, and are recognized by the companies and the courts.

*Xenos v. Wickham*, 2 Ho. Lords 296; *Power v. Butcher*, 10 D. & C. 340; 1 B. & Ad. 105; 7 Com. B. N. S. 449; 1 *Arnould Ins.*, pp. 108, 145.

But in this country an *insurance broker* is not distinguished from any other broker or agent, and as Mr. Philips says: "He is not himself a party in respect of the *premium* any more than in respect of any other liability or claim arising on the contract negotiated by him for his principal, unless he became so by special agreement. In the absence of any such special agreement, the parties in the policy are such in respect to the premium." (1 Philips Ins. 200, § 588.)

## THE BROKER AS AGENT OF THE INSURED.

He is considered simply an agent for any party that may employ him, and possesses no more power or authority than

is confided to him by his principal, or may be requisite for the proper performance of his mandat. He may be either a special agent for some particular purpose, or a general agent with more extended authority to bind his principal, in whose name only he can act; or he may, when having possession of the property of his principal, become a factor with power to sell, deliver, and receive payment therefor. A broker employed to procure insurance for his principal is a *special* agent for that purpose; his employment implies the extent of his authority to act in the premises, and when the insurance is procured his authority to act for his principal ceases. Hence, if the insured intrusts the money to his broker to pay the premium before receiving the policy from his hands, the broker is still the agent or factor of the insured for the payment of the premium, the position of the broker toward the company being unchanged.

*Marine Bank v. Clements*, 13 N. Y. 33; *Mutual Ins. Co. v. Stanton*, 2 Ins. Law Jour. 29; *Alexander v. Germania Ins. Co.*, 5 Ins. Law Jour. 360; *Rothschilds v. Am. Cent. Ins. Co.*, St. Louis C. App., 11 Ins. Law Jour. 182; *N. Y. Cent. Ins. Co. v. Nat. Prot. Ins. Co.*, 13 N. Y. (4 Kern), 85; overruling 20 Barb. 268; *Lentithorn v. Vorwerk, Hill & Denio* N. Y. 448; *Corning v. Calvert*, 2 Hilton 36; 8 Ins. Law Times 297; 9 *id.* 177, 180; *Grace v. Am. Cent. Ins. Co.*, S. C. U. S., Oct., 1883. This case covers the whole broker question.

#### THE BROKER AS AGENT OF BOTH PARTIES.

**786a.** The broker is for some purposes the agent of both parties but not simultaneously, though he is primarily deemed to be merely the agent of the party by whom he was *first* employed until the negotiation is definitely settled as to its terms between the parties; he may then become the agent of the other party to carry out the terms of the agreement; as when agent for the insured to obtain the insurance, and subsequently for the company to deliver the policy and collect the premium therefor.

*Bethune v. Neilson*, 2 Caines N. Y. 129; *Acey v. Fernie*, 7 Mees. & Welby 151; *Davis v. Shields*, 26 Wend. N. Y. 341; *Stewart v. Maltbee*, 34 Wis. 344, 351; *Younglove v. T.*, Exch. 387; *Howe v. Union Mut. Life Ins. Co.*, N. Y. C. A., 9 Ins. Law Jour. 180; *Colwell v. Keystone Iron Co.*, 9 Ins. Law Jour. 460; *Angell Ins.* 569; 1 *Arnould Ins.* 122.

#### THE BROKER AS AGENT OF THE COMPANY.

**787.** When a broker is entrusted by a company with a

policy, solicited by himself, for delivery to the insured, and collection of the premium therefor, he at once becomes the factor of the company, having its property confided to him for disposal, with instructions, implied if not direct, to collect the money therefor. And as such factor he alone becomes liable to his *second* principal for the proper disposition of the property so entrusted to him.

Should he collect the premium on delivery of the policy, and fail to pay the same over to his *new* principal, it will be the loss of the company and not of the insured, for whom he no longer acts. Hence it follows that, under such circumstances, a payment of the premium to the broker, upon delivery of the policy by him, is payment to the company; and any person making such payments to the broker will obtain a good title as against the company.

*Lentithorn v. Vorwerk* *supra*; *Higgins v. Moore*, 34 N. Y. 417; *Buckbee v. Brown*, 12 Wend. N. Y. 115; *White v. Chouteau*, 10 Barb. 262; *Case v. Mech. Bank. Asso.*, 4 N. Y. 166; *De Camp v. N. J. Mut. Life Ins. Co.*, U. S. C. C., So. Dist. N. Y., 3 Ins. Law Jour. 89; *Howe v. Union Mut. Life Ins. Co.*, N. Y. C. A. *supra*, six out of seven judges concurring; *Reynolds v. Globe Life Ins. Co.*, U. S. C. C. D. Mich., *Emmons, J.*; 1 Campb. 532; 14 Mass. 101, 121; Chap. 106, Law of Mass., makes the broker the agent of the company, and if he fails to pay over the premium, he is guilty of larceny. In New York it is embezzlement.

**788.** Entrusting the broker with the policy for delivery and collection of the premium therefor by the company is evidence to the insured, from which authority might be presumed that the broker was authorized to receive the money for the premium; and this the more readily as the broker receives his brokerage from the company and not from the insured, thus lulling the latter to sleep by the reasonable assurance, that the broker, being the representative and trusted agent of the company, by payment to him the condition of the contract as to payment of the premium would be properly complied with, and his indemnity be duly secured to him in the event of a loss by fire to the subject of the insurance.

*Brydenburgh v. Lowell*, 32 Barb. N. Y. 9, 17; *Sun Mut. Fire Ins. Co. v. Saginaw Barrel Co.*, S. C. Ill., June, 1885, and authorities cited *supra*; *Lycoming Ins. Co. v. Ward*, S. C. Ill., 8 Ins. Law Jour. 603; 10 La Anu. 787.

**789.** It is an axiom in insurance law, that where either party must suffer by the act of an agent, it must be the party

whose agent he is. (May Ins. 123, § 122, and authorities there cited.)

**790.** Any one bringing risks to a company for a percentage, is an agent of such company. (*Meadowcraft v. Standard F. I. Co.*, 61 Penn. St. 91.)

**791.** It was for many years held, in the New York City Courts especially, that the broker was the agent of the insured throughout; and many suits were decided against the insured where the broker had pocketed the premiums. But under more recent decisions the status of the broker has been fixed, as the agent of the insured to obtain the policy, and of the company to deliver and receive payment therefor, as per authorities hereinbefore cited.

#### PAYMENT IN KIND.

**792.** An agreement by an agent to credit the insured with payment of the premium upon his policy, in settlement of a personal indebtedness, is valid in the absence of fraud.

*Home Ins. Co. of N. Y. v. Gilman*, S. C. Ind. 1887, 17 Ins. Law Jour. 12; *Chickering v. Globe Ins. Co.*, 116 Mass. 521; *Ins. Co. v. Neyland*, 9 Bush Ky. 430; *Ins. Co. v. Colt*, 20 Wall. U. S. 560; *Angel v. Ins. Co.*, 59 N. Y. 171.

**793.** Where one H was general agent of several companies, and was in the habit of giving credit to insureds, to one of whom he was indebted for beef *for use of his family*, and charged such premiums to himself in his monthly account with the offices. The companies contended that such contracts were void upon their face, as an attempt to pay the agent's debts with his principal's insurance.

**HELD:** A general agent of an insurance company may waive the condition of the policy for cash premium. His powers differ from partners. An insurance agent may keep an account current with his company, and he may therein charge himself with any or all premiums. In such a case the agent may charge his personal credit with the amount of his premiums and credit the company as against himself. \* \* While the defendants' (companies) position may be a sound one in the general law of principal and agent, an exception has been admitted in the law of insurance, and if the agent had agreed to give credit to the insured, and himself to become the debtor of the company, the contract of insurance would not be rendered void by the fact that the agent had agreed to receive credit on his own account, instead of money for the premiums.

*Jones v. Aetna Ins. Co.*, and the *Ins. Co. N. Am.*, U. S. C. C., Dist. Mass. April, 18 9, 8 *Ins. Law Jour.* 415; *Post v. Aetna Ins. Co.*, 43 Barb. N. Y. 851; *Bouton v. American Mutual Life*, 25 Conn. 542; *Sheldon v. Connecticut Mut. Life*, 25 Conn. 207; *Taylor v. Merchants Fire Ins. Co.* 9 How. (U. S.) 390; *Robinson v. International Life Ins. Co.*, 42 N. Y. (3 Hand.) 54; *Stewart v. Aberdeen*, 4 Mees. & W. 211; *Catterall v. Hindle*, L. R. 2 O. P. 368, 370 For advertising; *Schwarz v. Germania Life Ins. Co.*, Minn., 2 *Ins. Law Jour.* 449.

**793a.** In the case of the *Mutual Benefit Life v. Nicolls*, S. C. Ky., a special agent, authorized to take and forward applications, and to receive and receipt for the first premium therefor, agreed to have a policy \$10,000 issued to the applicant, and accepted as payment for the first premium, amounting to \$190, a horse valued at \$200, the difference \$10 was paid by agent out of his own pocket. The horse was taken by the agent *for his own use*, nothing was said between the parties as to how the company was to be paid. The company repudiated the transaction, and the case went into the courts for settlement. On appeal, the Sup. Court held: "The company was not liable; and the trial court should have given peremptory instructions to the jury to find for the defendant."

**794.** On the other hand, in the case of *Hoffman v. John Hancock Life Ins. Co.*, decided in the U. S. C. C., N. D., Ohio (92 U. S. 161, 5 *Ins. Law Jour.* 389), where the sub-agent of the company accepted in payment of premium a horse valued at \$460.00; a note payable to himself \$100.00; payment of a debt owed by himself to insured \$53.37; and a premium note, payable to the company \$369.00; thus leaving, as the *property of the company*, the horse and the premium note only. When the transaction was reported to headquarters, the whole thing was repudiated, and several law suits resulted in consequence, during which the plaintiff, Hoffman died; his widow then brought suit on the policy, whereon Judge Swayne, U. S. C. C., presiding, made the following rulings:

1. An agent can only bind his company by acts done in the way usual in the line of business in which he is acting.
2. The acceptance of a horse in part payment of a life premium by the agent was *ultra vires*, and did not constitute a valid contract, binding the company.

3. It was *ultra vires* and a fraud as respects the company; Hoffman must have known that neither Goodwin nor Thayer (general agent) had any authority to enter into such an arrangement, and he was a party to the fraud.

**795.** It will be noted as distinguishing this case from that of *Jones v. Ins. Cos.* above, that the horse here taken in part payment of the premium was so accepted by the agent as the *property of the company*, and not for his own use; while the beef paid for by Jones with insurance premiums was for *for his own use*. In one case, the agent made his company a dealer in horses, which was *ultra vires*, beyond his authority; while in the other, the companies were *not* made butchers and meat-dealers, because none was bought *for them* by their agent Jones; and so with the Gore District Co. case, *infra*.

**796.** In the case of *Frazer v. Gore District Mut. Ins. Co.* (Court of Appeals, Ont., 1883), where the plaintiff, a harness maker, agreed to make a harness *for the agent*, in payment of the premium due upon renewal of his policy, the agent to assume the payment to the company. The renewal receipt was given to plaintiff, but the agent failed to report the transaction to the company until after the property covered was burned, when the report, with the money for the premium, was forwarded. The company on learning the facts denied all liability, and returned the premium money to the agent. Suit was brought and carried to the Court of Appeals, where the ruling of the trial court was affirmed as follows:—

“Where, in consideration merely of the setting-off of debts as between the agent of an insurance company and a policy-holder, the former wrongfully delivered a renewal receipt to the latter, the receipt did not bind the company and the policy lapsed.”

**797.** It is worthy of note here that the trial court in its judgment overlooked the fact that “an assured is not bound by any rules of the company governing its agents, not known to him, or waived by the agent’s not insisting upon them.” Also that the Court of Appeals overlooked the fact that the agent did not agree to take the harness “*for his principal*,” as the dicta of the court would imply, but *for himself*, which he had full authority to do, as the foregoing authorities upon this point amply testify.

## WAIVER OF CASH PAYMENTS.

**798.** That a duly authorized agent of a company can waive the stipulation of the policy requiring payment on delivery is beyond all doubt, as where the insured proposed to pay the premium at the time of receiving the policy, but the agent asked him to "let it lie and he would call for it when he wanted it." It was still uncalled for when the property burned. Held a waiver of the condition.

20 Barb. N. Y. 468; 8 N. Y. 153; 2 Dutch. N. J. 268; *Shear v. Phoenix Mut. Life Insurance Co.*, 4 Hun. N. Y. 800; *Penn. Ins. Co. v. Carter*, S. C. Penn. 1887.

Notwithstanding the condition of the policy that no insurance, whether original or continued, should be considered binding until the actual payment of the premium, it was still competent for the company to disregard this condition, and upon any renewal of the policy to waive by parol the payment of the cash premium; and the waiver could be by the company or any of its authorized agents by delivery of the policy without requiring payment of the premium.

26 N. Y. 460; 35 *id.* 151; 20 Barb. 468; 25 *id.* 189; 4 Hun. N. Y. 800; 12 Wall. U. S. 285; 20 *id.* 560; 7 R. I. 592; 2 Dutch. N. J. 268; 42 Me. 259; 25 Conn. 207; 24 Ohio St. 345; 42 Mo. 38; *Broom's Leg. Max.* 547; *Howell v. Knickerbocker Life Co.*, 44 N. Y. 276; s. c. 3 Rob. 282; *Bap. Church v. Brooklyn Fire Ins. Co.*, 28 N. Y. 153; 19 *id.* 305. *Per contra*: *Foudrinier v. Hartford Ins. Co.*, 15 U. C. C. P. 415; *Mutual Company cannot dispense with condition. McGillivray v. Provincial Ins. Co.*, 13 Moore's P. C. Cases 87; 18 Ins. Law Jour. 289, 717.

## NOTES IN PAYMENT.

**799.** The acceptance of a note for the premium is a payment of such premium and performance of the condition of the policy.

14 Mass. 121; 5 Ins. Law Jour. 830; 25 Barb. N. Y. 189; 20 *id.* 468; 3 Kent Comm. 260; 9 Bush Ky. 430; *Agricult. Assur. Co. v. Grammon*, 3 L. N. 19; *Casey v. Nagle*, 2 Abbott U. S. 156; 1 Philips Ins. 261, for authorities.

A failure to pay a note given for premium does not always affect the right of the insured to recover the whole sum insured.

101 Mass. 553; 32 Ind. 447; *Ellis v. Beaver & T. M. Ins. Co.*, 21 U. C. C. P. 84; *S'orms v. Canada F. & M. Co.*, 22 U. C. C. P. 75; *Curtin v. Ins. Co.*, S. C. Cal. 1889.

The note must be the note of the insured, and not that of a third party.

1 Philips Ins. 269 n.; *Mut. Ben. Life Ins. Co. v. Davis*, 12 N. Y. 569.

**799a.** Where the note provided that the policy should be void in case that it was not paid at maturity. Held: "By agreement of the parties, the payment of the note was a condition subsequent; and to enable the insurers to work a forfeiture they must, on the day the note becomes due, during the business hours of the day, demand payment, and, if not paid, declare the policy forfeited. In absence of such demand and declaration, the policy must remain valid, and the note become a mere debt." (2 Cincinnati Sup. C. R. 321.)

For other points relative to notes taken for insurance premiums, see May Ins. 688, *et seq.*

DIES NON JURIDICUS: SUNDAYS, HOLIDAYS.

**800.** Where the premium falls due upon Sunday it may be paid on the following day, the rule appertaining to negotiable notes entitled to grace, that payment must be made on the day preceding the last day of grace, when that day happens on Sunday, not obtaining in other contracts. Held: "The law authorized the postponement of payment until any time on Monday, for Sunday was not a day for the performance of contracts and doing of secular business. Had the premium been tendered on Sunday there was no obligation to receive it so it did not become payable until Monday.

Hammond v. American Mut. Life Co., 10 Gray Mass. 306; Campbell v. International Life Assur. Soc., 4 Bosw. N. Y., S. C. 298. This case contains an elaborate resumé of the history of the Sunday Law, so-called. *Salter v. Bush*, 20 Wend. N. Y. 205; *Ligh v. Knickerbocker Life Co.*, 26 La. Ann. 436.

As to holidays, no doubt exists as to contracts made on such days being valid. All that the law imports is that business laws and requirements cannot then be enforced, so that where bills without grace, premiums for insurance or other term payments of money, fall due upon Sunday or legal holidays, they are not payable until the next day, though payments made on those days would not necessarily be illegal.

UNDER VOID POLICIES.

**801.** Where, from any cause, fraud excepted, the risk assumed has not been run, whether owing to the fault

pleasure or will of the insured, the premium, if paid, shall be returned. But if the risk has once commenced there shall be no return of the premium.

*Tyrie v. Fletcher*, Cowp. 686; *Stevenson v. Snow*, 3 Burr. 237; *Fowler v. Scottish Equitable*, 4 Jur. N. S. 1196; *Anderson v. Thornton*, 8 Exch. 425; *Mulvey v. Gore Dist. Mut.*, 25 U. C. Q. B. 424; *Bleakley v. Niag. Dist. M. Ins. Co.*, 16 Grant Chy. 193; *Clark v. Manuf'rs. Ins. Co.*, 2 Wood & Min., C. C. U. S. 472.

#### UNDER FRAUDULENT POLICY.

**802.** Fraud upon the part of the insured or his agent will prevent the necessity for return of the premium paid, even though no risk has been run. So also where the insurance may be unlawful, where neither a court of law nor equity would entertain the suit under the policy.

*Prince of Wales Ins. Co. v. Palmer*, 25 Beav. 605; *Lowry v. Bourdieu*, Doug. 468; *McFaul v. Montreal Ins. Co.*, 2 U. C. Q. B. 61-2; *Gray v. Sims*, 3 Wash. C. C. 276.

### MEMORANDUM ARTICLES.

**803.** *Conditions of the policy*—"This insurance does not apply to or cover jewels, plate, watches, musical or scientific instruments (pianofortes in dwellings excepted), ornaments, medals, patterns, printed music, printed books, engravings, paintings, picture frames, sculptures, casts, models or curiosities, unless particularly specified in this policy."

**804.** *"Gas"*—The generating or evaporating within the building or contiguous thereto of any substance for a burning gas, or the use of gasoline for lighting, is prohibited under this policy."

**805.** *"Fences and other yard fixtures, also store furniture and fixtures"*, are not insured under the within policy, unless separately and specifically mentioned."

**806.** *"Builder's risk"*—The working of carpenters, roofers, tinsmiths, gas-fitters, plumbers, or other mechanics in building, altering, or repairing the premises named in this policy, will vitiate the same unless permission for such work be indorsed in writing hereon, except in dwelling houses only, where five days are allowed in any one year for incidental repairs, without notice or endorsement." (835.)

**807.** Articles required by the stipulations of the policy to be specifically insured are termed "*memorandum articles*."

**808.** These *memorandum articles* differ materially in different countries and different policies of the various companies.

In the New Zealand policy these articles are covered by the term "*personal property of every description.*"

**809.** Where a policy stipulated that "jewels, plate, medals, and other curiosities, paintings and sculpture, shall not be included in any insurance unless specified in the policy." Among the items of household furniture claimed for, were "*five portraits with their frames, and twelve each silver tea and table spoons, and a silver sugar-tongs.*" The court charged that although "*plate and paintings*" were not covered by the policy, unless specified, yet he doubted whether the condition could be applied to the portraits or silver spoons specified in the claimant's schedule. (2 Hall N. Y. 490.)

**810.** PLATE includes all articles for *household purposes* made of *gold or silver*. It *does not* include *plated* ware, articles of jewelry, or other articles for personal adornment. Forks and spoons have been held not to be included in the term plate. (3 Ins. Law Jour. 668.)

**811.** A WATCH, being a "memorandum article," is held not to be embraced in a policy upon furniture and *wearing apparel*, unless specifically named. (Wright O. 227; 1 Benn. F. I. Cases 432.)

**812.** Some policies include among "*memorandum articles*" the following additional items:—

"Plate-glass over three square feet, wall-paper and bordering over fifty cents per piece, decorative painting, stucco-work and fancy flooring, over the cost of plain painting, plastering, and flooring." Others add "*frescoes or wall decorations exceeding in value five dollars per square yard.*"

**813.** GAS: *generating of gas*, in this connection, would include the *patent gas-machines* and "*carburetters*" for increasing the intensity of the ordinary gas-flame, by passing the gas through naphtha, benzine, or similar articles, the reservoir of which is located in the building.

**814.** *Patent gas-machines* would be embraced in this stipulation if "*within or contiguous to the building.*" Where the vault or gas-house containing the reservoir is fifty feet removed, it is deemed not to increase the hazard.

**815.** FENCES AND OTHER YARD FIXTURES, GREEN-HOUSES, PRIVIES, ARBORS, or out-houses, are not covered unless specifically named in the policy.

**816.** STORE FURNITURE will include movable chattels, generally, such as may be useful or necessary to the business, as show-cases, desks, counters, chairs, stools, looking-glasses, and mirrors for use, when within the prescribed dimensions, stoves, scales when movable, trucks, ordinary tools, and all similar property *for use*, and would not be covered under the phrase "store fixtures." Fancy glass or other signs, in an office, would also be included.

**817.** SAFES are not included in *store furniture*.

FIXTURES.

**818.** Much confusion has existed among fire underwriters as to what constituted "fixtures" under that term when found in the policy, and the law gives but little aid in determining the doubt. The authorities are far from being harmonious.

**819.** It would seem to be a palpable misnomer, so far as the law is concerned; the term "fixtures" in its ordinary legal signification is expressive of the act of annexation, as that which is fixed or attached to something as a permanent appendage. And when articles are removable—not permanently annexed—they cannot be called "fixtures." Hence it is, here as well as in some other cases in the policy, the term is not limited to the technical legal definition of the word "*fixtures*." In cases of doubt, great weight must be given to the actual or presumed intention of the parties erecting the structure claimed as a "fixture."

Dooley v. Crist, 25 Ill. 551; Ogden v. Slack, 34 id. 522; Kelly v. Austin, 46 id. 156.

**820.** The term "*fixtures*" is always applied to articles of the nature of personal property. (4 Benn. F. Ins. Cases 485.)

**821.** "By the term '*fixtures*' are denoted those articles which were *chattels*, but which, by being physically annexed

or affixed to real estate, became a part of, and accessory to the freehold, and the property of the owner of the land."

Annexation by screws, bolts, nails, or even by tacks, has been held to constitute sufficient fixing to make the thing so attached part of the freehold.

Where the attachment is but slight, and does not enter into the physical construction of the reality, the nature of the article and attending circumstances must decide its status. A church organ, under a mortgage, has been held to be a "fixture." (*Chapman v. Union Mutual Life*, Appell Court, Ill.)

Hill, *Fix.* 13, 21, 26; 20 Barb. N. Y. 407; 14 Allen Mass. 177; 13 Mich. 134.

**822.** If the only impediment to the removal of any particular thing is its own weight, it is not a "fixture;" but a colossal structure, resting by its own weight upon a pedestal, is a "fixture." (2 Kay & Johns 536; 16 Ill. 480.)

**823.** A cistern standing on blocks, in a cellar, was held to be a "fixture;" but a cistern and sinks fastened by nails, or set into the floor by cutting away the boards; or a water-pipe fastened to the wall by hooks, if put into the house by a tenant, though not considered "fixtures" in law, being personal property, would be covered by the tenant's policy "on fixtures." (4 Gray Mass. 23; Hill on Fixtures 17.)

**824.** The original rule of the common law subjects everything affixed to land to the law governing the land; but the general right of removal of certain things affixed to land has grown up into a system of judicial legislation, and instead of being an exception is regarded as an established innovation upon common law rules. (Hill on Fixtures 17.)

**825.** Privilege of removal is conceded more fully to a tenant occupying premises for the purposes of trade and manufacture than to an agricultural tenant; and again this privilege is more fully granted to an agricultural tenant than to a vendor, upon sale of the property, or as between heir and executor. As between these latter, growing crops, manure lying upon the land, and fixtures erected for the purposes of trade and manufacture, pass with the land.

19 Conn. 154; 14 Barb. N. Y. 662; 40 Me. 300; 15 Ohio St. 416.

TRADE FIXTURES.

**826.** The earliest legal relaxations were made in favor of what were termed "*trade fixtures*," including all such things as may be affixed by the tenant "*for the purposes of trade and manufacture.*" Under this ruling a tenant has been permitted to remove coppers, tables, partitions and vats used by him as a *soap-boiler*; chimney-pieces and wainscoting put up by the tenant; a pump in a well; a cider-mill and press; blinds and verandahs; a hydraulic press fixed in the ground and walled up in solid masonry, and nailed to the building, when necessary to his business. The Court of Appeals of Maryland

HELD: "That a *lime kiln* is a necessary implement or *fixture* for burning lime, without which the business or trade of burning lime cannot be carried on, and is a trade fixture, however firmly it may be attached to the soil, and is to be regarded as personal property."

Hill on Fixt. 30; 9 Cowen N. Y. 63; 4 Mass. 352; 3 Johns. N. Y. 5; 17 *id.* 116; 4 Watts Pa. 330; 2 Peters U. S. 137, 144; 4 Pick. Mass. 310; 11 Vt. 433; 30 *id.* 442; 32 *id.* 372; 45 *id.* 317; 20 Wend. N. Y. 636; 33 Pa. St. 522; 79 *id.* 403; 10 Barb. N. Y. 157; 25 *id.* 489; 40 Mo. 91.

**827.** Whatever a tenant affixes to a freehold, for the *purposes of the trade for which the freehold is occupied*, he may remove at any time before the expiration of the tenancy—the law holding it not to be "*fixtures*" but personal property; yet, as between the tenant and his insurance, the same items might be "*fixtures*," to all intents and purposes, and so covered by his policy. (1 Denio 91; 5 *id.* 527; Hill on Fixt. 18, 20.)

**828.** Annexations for ornament, or domestic comfort or convenience, as *gas-fixtures*, *gas-fittings*, *chandeliers*—capable of being removed without injury to the house, or leaving it in worse condition than before such annexation—may be removed by the tenant, before the expiration of his lease, and may be insured by him as "*fixtures*."

Hill on Fixt. 19; 9 Casey Pa. 522; 10 Richd. S. C. 135; 9 Ins. Law Jour. 582.

**829.** *Gas fixtures, water pipes in the wall, gas and water pipes* laid in the ground, are "*fixtures*" in law, and go with the realty. These cannot be removed by the tenant, though put in by himself, except by the consent of the owner of the freehold; and without such consent for removal, the tenant has

no interest in them after they are put in place. (Lawrence v. Kemp, 1 Duer N. Y. 683; McKeage v. Hanover Ins. Co., 81 N. Y. 41.)

**830.** STORE FIXTURES are *trade* fixtures, including shelving and the glass doors thereto attached, if any, counters, drawers, stools, and all similar property, permanently fastened to the premises and pertinent to the business, whether in or out of show windows, and which may be used or intended for the purposes of business by the owner.

In heavy mercantile establishments, *fixed scales* and hoisting apparatus by hand would also be included.

In Ohio, *store fixtures*, when the property of the owner of the building, are held by law to be covered by a policy on the building, without further specification, and regardless of any restrictions in the policy.

**831.** SIGNS of wood or metal, or when painted upon the building outside, are not included in either *fixtures* or *furniture*; nor is a *sign* painted on the building included in a policy on the building.

**832.** FURNITURE and MOVABLES are chattels, and are not covered by a policy on *fixtures*. Also a fountain fixed upon the counter has been held as furniture. (Fore v. Hilliard, 63 Ala. 410.) Pianos and billiard tables in a billiard hall, held to be furniture. (Sumner v. Blake, 59 N. H. 242.)

#### PLATE-GLASS

**833.** In doors, windows, or show-cases, or mirrors beyond a specified size—three feet square—or stained glass, must be specifically named in order to be covered by the policy. *Common glass*, even when of large size, is not to be considered as *plate-glass*.

In the case of the Royal Ins. Co. *et al.* v. Westminster Fire Office, for co-contribution to loss upon a "building," where a portion of the roof was fitted with *stained glass*, the question was: Did a policy on the "building" cover the "stained glass" roof? The case was tried in the Q. B. Division, Baron Pollock

presiding. The jury were discharged, and decision left to the learned judge, who decided as follows:—The question turned upon the language of the policy entered into with the *Westminster* Office, which showed that "the building" was the subject matter of the insurance. The stained glass in question performed a double purpose, as first of all it protected those in the restaurant from the weather, and secondly, it formed a highly ornamental decoration. It was, in fact, a highly expensive work of art, and the essential object of it was to attract the eye, and give additional beauty to the building. It was not requisite for the ordinary purposes of a building: and he came to the conclusion that it could not necessarily be considered as coming within the words of the policy, "the building." He was strengthened in this conclusion, looking to the fact that these decorations were not contemplated in the first instance in the erection of the building, and that a separate policy had been effected upon this stained glass. He must therefore give a verdict and judgment for the defendants with costs; but considered that the question had very properly been brought before the Court.

**834.** FRESCOED WALLS, ornamentations in stores and dwellings, such as carving, gilding, stucco and similar work, must be specifically named in the policy, or it will not be covered.

#### BUILDER'S RISK.

**835.** *Builder's risk*, without consent endorsed upon the policy, except as stipulated therein (**806**), would render the contract void.

When the policy stipulated that if the insured premises were used for the purpose of carrying on therein any trade or occupation of the class denominated specially hazardous, it should be void unless certain conditions were complied with. Among the hazardous class, *carpenters* were named.

HELD: "That this term had no reference to the employment of carpenters in making repairs or new erections on the premises, when they were not used as a workshop by them."

HELD, by the Maryland Court of Appeals :—

"When it is necessary to employ mechanics the year round to keep a building in thorough repair, the building being in constant use for the purposes of business, such employment of mechanics to keep up repairs does not require a special 'builder's risk.' But the fact should appear in the policy."

**835a.** A builder's risk in contradistinction to a carpenter's risk is when a building is placed in possession of the builder for the purpose of rebuilding, alteration or extended repairs; while a "carpenter's risk" applies more specially to light repairs and alterations. The former is usually under a contract; the latter by day's work. The policies usually allow from 5 to 15 days in a year for repairs without requiring notice. (**806.**)

2 Ins. Law Jour 620, 643; 4 *id.* 3, 5, 15, 19.

#### BETTERMENTS.

**836.** *Betterments* or *improvements* are additions to and alterations of a building which render it better than mere repairs. When such improvements are made by the tenant under a special covenant with the landlord to that end, they are the property of the tenant, and he can insure them; but if there be no special agreement in the premises, such *betterments*, being permanent, cannot be removed by the tenant; hence, he has no insurable interest therein. (**1718.**)

11 Me. 432; 23 *id.* 110; 24 *id.* 192; 13 Vt. 533; 17 *id.* 100; 1 Ohio 511; 13 *id.* 308; 10 Yerg. Tenn. 477.

#### EXCEPTIONAL RISKS.

**837.** *Conditions of the policy.*—(1.) "This company shall not be liable by virtue of this policy for money, bullion, bills, notes, accounts, deeds, evidences of debt or securities of property of any kind."

**838.** (2) "Nor for for any loss in buildings unprovided with good or substantial brick or stone chimneys."

**839.** (3) "Nor in consequence of any neglect or deviation from the laws or regulations of police, where such exist."

**840.** 1) *Money* is coined gold or silver. *Bullion* is usually uncoined gold or silver, in the mass or lump; but may include coined metals when reckoned by weight or in the

mass, as foreign coin at the mint. (2 Metcf. Mass. 1; 1 Philips Ins. 223, 249.)

**841.** *Gold and silver coin, bullion, diamonds, and jewels* were formerly covered on the continent of Europe, under transport policies, as *merchandise* for transportation: such policies, from the nature of the articles, being valued, as no value other than the actual one could be agreed upon in case of loss. The earliest English policies against loss by fire exclude these articles especially. (Park Ins. 21.)

**842.** *Bills, bonds, notes, accounts, deeds, and such like* are only *evidences of value*—hence, losses of such are consequential not direct; and beyond the value of the saleable material—which classes them as goods—they have no insurable value. (Sumner C. C. U. S. 434; 1 Philips Ins. 223, 249; 2 Hall N. Y. 490; Hopkins Mar. Ins. 235.)

**843.** The Hamburg policy excludes from insurance the following also :—

“Documents and papers of value of all kinds, jewels not set, genuine pearls, gunpowder, gun-cotton and manufactories thereof, and tar-boiling establishments.”

**844.** (2) “Such a general condition as this second section imposing a burden upon the insured will be strictly construed, and not enforced against the insured unless misrepresentations were made in the application.

**845.** (3) This third stipulation is—

Held: To refer only to articles of an intrinsically dangerous nature, as liable to cause injury accidentally or by carelessness, and not to refer to liquors, the traffic in which was made illegal by statute.”

## DATE.

**846.** *Conditions of the policy.*—"And said.....Insurance Company hereby agree to make good unto the said assured....., executors, administrators and assigns, all such immediate loss or damage not exceeding in amount the sums insured, nor the interest of the assured in the property, except as herein provided, as shall happen by fire to the property above specified, from the.....day of....., one thousand eight hundred and....., at twelve o'clock at noon, to the.....day of..... one thousand eight hundred and.....at twelve o'clock at noon.

### COMMENCEMENT AND EXPIRATION OF THE RISK.

**847.** It is of absolute importance that the hour of the commencement and cessation of the liability of the insurers should be distinctly stated, otherwise much misunderstanding might arise. To meet this point the condition of the policy makes all risks commence at twelve o'clock noon of the day specified, and expire at twelve o'clock noon of the last day of the term. (164.)

This stipulation, as it now stands in fire policies, was adopted from the marine, where it was in use at a very early date. *Le Guidon de la Mer*, A. D. 1554, says :—

"Inasmuch as it would be difficult to particularize at what hour of the day the loss occurred, and at what hour of the day the insurance was made, the hour of noon is taken for both."

Cleirac, *Us et Coutumes de la Mer*, 250 ; 2 Valin's *Comm.* 95 ; 1 Magins *Essays* 84, § 73 ; 2 *id.* 424 ; 1 Arnould *Ins.* 19 ; 1 Phillips *Ins.* 41, § 63 ; Marsh. *Ins.* 241 ; Park *Ins.* 22, 37 ; May *Ins.* 484.

The first mention of date of expiration in American fire policies is in the Massachusetts Fire Ins. Co. of 1797, at twelve o'clock noon. (451.) The old Virginia Company (448) made its policies expire at "sunset."

**848.** English policies for the most part commence and expire at six o'clock P. M., instead of twelve at noon. The policies of the HAND-IN-HAND Insurance Company commence at any time during the day of subscription and terminate at any time during the last day of the term, the expression

being "*both inclusive*," equivalent to "a year and a day." (**58, 860.**) In many of the earlier policies no hour of commencement or expiration is named. (**459a.**)

4 Walford Cyc. 171; Emerigon Ins. 639; 1 Philips Ins. 28, § 37; 1 Arnould Ins. 416.

**849.** Even under this definite fixing of the hour of expiration several delicate points might arise, such as: Where a fire commences at 11.30 A. M. of the day of expiration, and burns until late in the afternoon: Is the insurer liable for all of the loss, or only that portion which occurred up to twelve o'clock, which, perhaps, was but a very small part of the whole?

**850.** Or, when a fire was first *discovered* at 12.15 P. M. of the day of expiration, and which must have been burning or some time previous to being discovered: What would be the liability of the insurers in such a case? (**858.**)

**851.** Where the true solar time differs from the time observed in manufacturing establishments, the former being faster than the latter: Which shall be deemed the correct time under the policy? (**861.**)

**852.** Where a fire commences in a building occupied by several tenants at 11.30 A. M., but does not reach the property under insurance on same premises until after twelve o'clock noon; yet the fire has occurred in such a manner as to prevent the removal of the insured property: What is the liability of the insurer? (**858.**)

**853.** Many similar delicate cases might be imagined, and might, some of them at least, occur. But up to this time there are no precedents upon American court records deciding such cases. (**861.**)

May Ins. 487; Groussael v. Ins. Co., 24 Wend. N. Y. 209; Walker v. Protection Ins. Co. 29 Me. 317; Bradlie v. Meriden Ins. Co., 12 Peters U. S. 373; Arnould Ins. 452, Case of Marston v. Dunlop, 1 Term R. 280.

#### LEGAL YEAR.

**854.** At common law, the term "*year*" in a contract signifies a calendar year. In ordinary contracts a "*month*"

signifies a *lunar* and not a calendar month, unless there was something in its terms, or some custom of the trade in reference to which it was made, to rebut the presumption and show that a *calendar* month was intended.

Chitty Contr. 564; Molloy, de Jure Maritimo 288; 2 Ins. Law Jour. 640.

**855.** In cases of bills of exchange, promissory notes, and other mercantile contracts, the rule is otherwise, and when *months* are named, *calendar* months are intended. In New York the term *month*, used in a statute or contract, or any instrument, is construed to mean a *calendar month*, unless otherwise expressed. In computing the time, the day of making the contract is excluded.

N. Y. Rev. Statutes 606, § 4, Revisor's Notes.

**856.** In Pennsylvania the general rule as to computation of time is, that when by an act of Assembly a given number of days is allowed to do an act, or the act may be done within a given number of days, the day on which the rule is taken or the decision made is excluded.

**857.** Where a policy was issued on the third day of September, 1797, and the death of the insured happening on the same day, in the following year, just after midnight: The policy was worded "*from the day of the date*," no hour specified, which Chief Justice HOLT decided excluded that day from computation, but which would not have been the case had the phrase *from the date* simply been used. Second: "That the law makes no fraction of a day; therefore, the policy was binding until the close of the day on which he died."

Howard Case, 2 Salk. 625; 1 Philips Ins. 511, n. 6; May Ins. 484; 2 Parsons Ins. 445; 1 Lord Raym. 480.

**857a.** A day begins and ends at 12 o'clock at night. To commence on a given day begins with the day unless an hour be named.

**858.** Again: Where a fire policy was expressed to take effect *from* February 14th to August 14th. Between ten and eleven o'clock on the night of August 14th, a fire occurred on the premises, which did the assured £3,500 damage. The plaintiffs claimed to recover this loss, on the ground that the

policy remained in force till the last moment of August 14th. Defendants resisted, on the ground that the policy began on February 14th, and determined on the last moment of August 13th. The court held that the policy was in force till the end of August 14th, and gave judgment for plaintiffs. (**857a.**)

**859.** The Chief Baron of the Court of Exchequer, in delivering judgment, said:—

“There could be no doubt that, upon the authority of adjudged cases, the 14th of August was covered, and it might be that the 14th of February was also covered.”

Baron MARTIN said that, “in his opinion, both days were covered, but certainly the 14th of August was.”

**860.** This distinction has been overruled by subsequent decisions. The Court of King's Bench has decided that “from the date” and “from the day of the date” mean the same thing, and they are to be taken to be *inclusive* or *exclusive* according to the context or subject-matter.

Isaacs v. Royal Ins. Co., 5 L.R. Ex. 296, 39 L.T. Ex. 189, 18 W.R. 982, 22 L.T. N.S. 681; Perry v. Provident Life Ins. Co., 99 Mass. 163; 103 Mass. 242; Atkins v. Sleeper, 7 Allen Mass. 487; 1 Philips Ins. 372, § 921; Knight v. Faith, 15 Q.B. 649; 2 Parsons Ins. 65; Johnson v. Humbolt Ins. Co., 91 Ill. 92; Firemen's Ins. Co. v. Powell, 13 B. Monroe 311; Fletcher v. Ins. Co., 18 Mo. 193; Howell v. Protection Ins. Co., 7 Ohio R. 234; Furueaux v. Bradley, cited by Marshall, p. 504; and by Park 166; see Abstract of Continental Laws on this subject, to be found in the “American Exchange and Review,” Philadelphia, issue of March, 1881, and comments thereon by Dr. Fowler, Editor.

This decision of Lord HOLT gave rise to the phrases “both inclusive” and “first and last days included,” which are to be found in both marine and fire policies. (**848.**)

**861.** The decisions **858**, **859**, would also seem to imply that the liability of insurers for loss by fire is co-existent with *the commencement of the fire*, without reference to its duration, as nothing is said as to the extent to which the insured could recover, though evidently the fire burned until *after* midnight.

## DATE OF SUBSCRIPTION.

**862.** The *date* of subscription of the policy is only presumptive, not conclusive of the facts it attests. The actual

*date* of execution may be shown by parol evidence, though different from that which the policy bears. (166.)

1 Phillips Ins. 24, § 25; 2 Parsons Ins. 43; 1 Duer Ins. 90.

**863.** If the written date be an impossible one, the time of subscription or delivery may be shown.

**864.** Where a policy is delivered subsequently to its date, the risk will be assumed to have taken effect from such date, no reason appearing for a different construction. (868.)

1 Phillips Ins. 24, § 25; Annesley Ins. 48; Brown v. Hartford Ins. Co., 3 Day 58.

**865.** The *date* of an instrument is so far a material part of it, that an alteration of it by the holder, after execution, will void the instrument. (967.)

2 Duer Ins. 248; 1 Phillips Ins. 71, § 115; Langhorn v. Cologan, 4 Taunton 330 Nichols v. Johnson, 10 Conn. 192; 2 Bouv. Law Dict. 540.

#### CONSUMMATION OF THE CONTRACT.

**866.** Where a proposal is made for insurance upon property at a distance, it may happen that, at the time of making such application, the property has actually been destroyed by fire; it is usually held to be a sufficient contract *if both parties were ignorant* of the loss at the time of consummation of the contract. (867.)

1 Phillips Ins. 512, § 921; Barr v. Gibson, 5 Mees. & W. Exch. 390; Hallock v. Commercial Ins. Co., 2 Dutch. N. J. 268; Commercial Ins. Co. v. Hallock, 3 id. 645; Emerigon Ins. 621; Bunyon Ins. 49; 2 Valins' Comm. 93; Whittaker v. Ins. Co., 29 Barb. N. Y. 312; City of Davenport v. Ins. Co., 17 Iowa 276.

**867.** When the property is distant, and its *status* unknown to either party, an insurance against fire will bind the insurer for a loss occurring before the date of the contract, *if such appears, either from the policy, or from attending circumstances, to have been the intention of the parties*; upon the well recognized theory of "lost or not lost," in the marine branch. (866.)

3 Amer. R. 301; 1 Duer Ins. 69; Bunyon Ins., 2nd Edition, 53; Mead v. Davidson, 3 Ad. & Ell. 303; Fitzherbert v. Mather, 1 Term R. 12; Franklin Fire I. Co. v. Colt, S. C. U. S., 20 Wall. U. S. 560, 4 Ins. Law Jour. 550; Angel v. Hartford Fire Ins. Co., N. Y. C. A. 1875.

#### CONSUMMATION OF CONTRACT.

**868.** But, if the property was actually destroyed before the time when the policy was contracted for without further agreement, the contract would be void, and the insured entitled to the return of the premium, if paid. (Bunyon Ins. 54; Strickland v. Turner, 7 Exchq. 208.)

**869.** When an agreement is made between parties by their agents on the 20th, and on the night of that day the property was destroyed by fire—on the morning of the 21st the policy was executed and delivered in accordance with agreement—both parties being ignorant of the loss. Held: a valid contract.

*Hallock v. Ins. Co. S. C. N. J., 4 Benn. F. I. Cases 195, 210; Bently v. Columbia Ins. Co., 17 N. Y. (3 Smith) 421; Franklin Fire Ins. Co. v. Colt, 20 Wall. U. S. 56, cited 4 Ins. Law Jour. 367.*

**870.** The effect of this ruling is: that where the property was in existence at the time the contract was made, the company will be bound by the act of its agent, though the policy was not issued until *after* the fire, even if known at the time of such issue. But where there was no property in existence at the time of making the contract, there was nothing to insure, hence no valid contract could be made unless under a special agreement, both parties being ignorant as to any loss,—like the "lost or not lost" clause of the marine policy.

**871.** Where an agreement had been made for insurance on 30th of March, and premium paid, though the policy was not made until some days thereafter, in the meantime the property was burned; a policy of the same date as the day on which the premium was paid was made and delivered to the insured. Held: "the policy took effect; by relation from the day of the date thereof." And the agent had full authority to make the policy after the fire, according to the prior agreement.

*Ellis v. Albany City F. I. Co., 50 N. Y. 402; Woody v. Old Dominion F. I. Co. S. C. Va., 13 West Ins. Rev. 522; 4 Benn F. I. Cases 195, 210, 406.*

**872.** Where a company offered to insure upon certain terms, by letter, and the insured accepted the terms and inclosed the premium. Held: That the contract was consummated from

*date of mailing* the acceptance, though the property was burned before the receipt of the reply by the company.

1 Phillips Ins. 13, § 16 *et seq.*; 9 Howard U. S. 390; 6 Ins. Law Jour. 689.

**873.** Where application was made March 3rd for insurance to take the place of a policy expiring March 13th, on which day, before noon, the company made out the policy and mailed it to the agent for delivery. The property burned March 13th at 8 A. M. The company, on hearing of the loss on March 15th, telegraphed to the agent to return the policy, as "the risk had not been taken when it burned." Held: "The acceptance of the proposition to insure completed the contract," and after the policy had been forwarded by mail for delivery, the contract could not be rescinded. (1403.)

That "In the absence of fraud or concealment, the company was as much bound for the loss as if it had occurred after the delivery of the policy."

American Home Ins. Co. v. Patterson, 28 Ind. 117; Western v. Genesee Ins. Co., 2 Kern. N. Y. 258; 29 Barb. N. Y. 312; Eames v. Home Ins. Co., U. S. S. C., 6 Ins. Law Jour. 689; Ins. Co. v. Colt, 20 Wall. U. S. S. C. 537.

## RENEWALS.

**874.** *Condition of the Policy.*—"This insurance (the risk not being changed) may be continued for such further time as shall be agreed on, provided the premium therefor is paid and indorsed on this policy, or a receipt given for the same; and it shall be considered as continued under the original representation and for the original amounts and divisions, unless otherwise specified in writing; but in case there shall have been any change in the risk, either within itself, or by neighboring buildings not made known to the company by the assured at the time of renewal, this policy and renewal shall be void." (478-10.)

**875.** The oldest form of conditions of *renewal* reads as follows:—

"For so long a time as the said ..... shall well and truly pay or cause to be paid the sum of ..... dollars to the said ..... company on or before the ..... day of ..... which shall be in each succeeding year, and the said corporation shall agree thereto by accepting the same."

This was copied from the earlier English policies, where it

was used with a view to continue the contract from year to year, thus avoiding the necessity of making a new policy, and paying for a new stamp each time.

Fire policies usually contain a provision for *renewal* or continuance, upon the payment of the premium. Where there is no such provision for *renewal*, it will require a written agreement of the underwriter to renew it after expiration.

**875a.** The non-payment of premium for renewal, as in the original policy, voids the insurance, unless distinctly waived.

10 Ins. Law Jour. 830; Phoenix Mut. Life Ins. Co. v. Hinesly, 8. O. Ind.; Cockerell v. Cincinnati Ins. Co., 16 Ohio 140; 1 Phillips Ins. 52, § 75.

**876.** The exact legal status of a *renewal*, as to whether it is a *new contract*, or simply a *revival* and *continuance* of the old one, has not been definitely settled by the courts; the construction will depend upon the wording of the renewal receipt.

N. Eng. F. & M. Ins. Co. v. Wetmore, 32 Ill. 221; 4 Benn. F. I. Cases 659.

The rulings in several of the States are :—

**877.** In Michigan it was held that each *renewal* of a policy of insurance is a new contract, subject to the local laws in force at the time of *renewal*, but in no way changes the terms and conditions, except to continue the policy in force.

Brady v. N. West Ins. Co., 11 Mich. 425; Ins. Co. v. Kranich, 136 Mich. 289.

In Illinois, held: that an action will lie upon a *renewal receipt* on which the premium has been paid, as upon an express agreement of the insurance company *of that date*.

It has been further held in Illinois :—

"That a *renewal receipt* does not constitute a new agreement of insurance, but merely revives and continues in force the old one; and if a loss occur within the new term, a recovery can only be had upon the original contract."

Herron v. Peoria F. & M. I. Co., 28 Ill. 235.

**878.** In Maryland :—

"That the *renewal receipt* was not a new contract (where the *renewal receipt* read 'which is hereby *continued* in force

for another year"), but was simply an extension for another year of the original sealed contract."

McGowen, 16 Md. 7; Shertzer v. Ins. Co., C. Ap., Md., 8 Ins. Law Jour. 73.

"Renewal receipts not under seal, do not re-execute a policy under seal, and limited in time, but are new parol contracts on same terms as the policy, unless otherwise expressed."

Firemen's Ins. Co. of Balt. v. Floss & Co., Md. C. Ap., 16 Ins. Law Jour. 831.

**879.** In Maine:—

"The *renewal certificate* is not complete in itself, but refers to the policy, and makes it a part of the contract. The two papers are then but parts of the same transaction, and must be so construed as to make one contract; and, being in force at the time of the fire, must determine the rights of the parties."

**880.** An agreement to *renew* a policy implies that the new policy shall have the same terms, and be in all respects, similar to the old policy, printed or written, except as to the amount. The insertion of the new conditions was in bad faith on the part of the company, and the plaintiff is entitled to relief on the familiar principle of mistake on one side and fraud on the other. (Hay v. Star F. I. Co., 77 N. Y. 235, 8 Ins. Law Jour. 632.)

Welles v. Yates, 44 N. Y. 525; Rider v. Powell, 28 N. Y. 310; 8 Ins. Law Jour. 633; 4 id. 780; Hay v. Star Ins. Co., 77 N. Y. 235; 4 Benn. F. I. Cases 736; 43 Barb. N. Y. 35.

**881.** *Of the premises becoming vacant.* Where a policy of insurance contained a condition that, "if the premises insured were vacated by the owner or occupant for a period of more than thirty days, without notice to the company and consent indorsed on the policy, it should become void," it was, upon a *renewal* of the policy—

**Held:** If the premises were unoccupied when the *renewal* occurred, it, under the terms of the policy, became the duty of the assured to give the same notice that was required under the original contract of insurance, and obtain the consent of the company, (1128.)

9 Allen Mass. 231; 10 id. 228; 8 W. Va. 605; 6 Ins. Law Jour. 728, § 164.

**882.** *Notice and consent under the original contract.* Notice to the agents of the company, and their consent, while the policy was originally in force, could not be regarded as

notice to the company and binding on them under the renewal thereof.

**883.** *Omission to indorse consent on the policy.* But it is not essential to the binding force of the consent of the agent in such case, given upon proper notice, that it should be indorsed upon the policy.

*Pitney v. Glenn Falls Ins. Co., N. Y. C. App., 4 Ins. Law Jour. 780; Brown v. Ins. Co., 18 N. Y. 381.*

#### WAIVER.

**884.** If a company, with full knowledge of a risk, renew the policy, any misrepresentations in the original application, or omission to give notice of other insurance under the original policy, must be deemed to be *waived*, and the company will be bound by the contract. **(1151.)**

*Maryland F. I. Co. v. Gusdorf, Md. C. App., 5 Ins. Law Jour. 384; Internat. Life Ins. Co. v. Franklin F. I. Co., N. Y. C. A., 5 Ins. Law Jour. 371, 404, § 106 562, § 128, and authorities cited.*

**884a.** *Indorsements.* No indorsements should be made upon renewal receipts; they should be made upon the original policy of which the receipt is the renewal for an additional period. It is better, when the risk at the time of renewal of the insurance has been in any way materially altered, to issue a new policy instead, thus avoiding all occasion for misunderstanding in the event of subsequent loss. In the city of Boston no renewal receipts are issued, a new policy takes its place.

#### CONTINUOUS INSURANCE.

**885.** Where a verbal agreement existed to the effect that, "Until one of the parties dissented, the contract of insurance should be *continuous*, and the company should look to the furnishing of the *renewal receipts* and the collection of the premium as it became due," and the company subsequently increased the rate of premium, which increase was assented to

by the insured. *Held*: That the change of premium terminated the arrangement, and a new bargain would be necessary to effect a *continuing arrangement* as before the change.

Franklin F. I. Co. v. Chicago Ice Co., O. App. Mo. 1872, 2 Ins. Law Jour. 609.

**885a. Agreement for Renewal of an existing Insurance.**

When the insured was about to leave home for a time, and requested the agent of the company to renew the policy in same company and for the same amount upon expiration of present insurance, but no premium was paid. The agent agreed to attend to the matter. The policy contained a condition that it "should be void if the premium remained unpaid;" also the further provision that the insurance might be renewed for any agreed time "provided the premium therefor is paid and indorsed on the policy or receipted for." *Held*: That "the agreement was to effect an insurance in future, not a valid contract *in presenti*, and contained no waiver of the policy condition requiring pre-payment of premium."

Taylor v. Phoenix Ins. Co., Sup. Court Wis., 8 Ins. Law Jour. 851.

## CANCELLATION.

**886. Condition of the Policy.**—"This insurance may be terminated at any time, at the request of the assured, in which case the company shall retain only the customary short rates for the time the policy has been in force. The insurance may also be terminated at any time at the option of the company, on giving notice to that effect, and refunding a ratable proportion of the premium for the unexpired term of the policy."

**887.** This is a comparatively modern stipulation in fire policies. It is first found in the American policy, as above cited, in the form of 1860. Most of the older policies were either entirely silent upon the subject, or made provision only for cancellation by the company under certain circumstances, but gave the insured no option in the matter.

The insurance contract is unilateral in matters concerning the risk which enter into and constitute it a binding instrument

between the parties; the *Cancellation clause* is quite another thing. It is simply a subsequent modification of the instrument in the nature of a proviso, under which one or the other of the contracting parties, at their several options, and without further agreement, may, under the agreed conditions, withdraw from or rescind the policy. The cancellation of the policy being thus optional, subject only to the will, wish or whim of either contractant, the clause possesses the elements of equity and equality which should mark every business contract, but which are not present when the stipulations of the policy restrict the right of cancellation to but one of the contracting parties, and that one the company itself; the policy then becomes unilateral indeed, but in a sense and manner altogether foreign to the intent and purpose of the insurance contract as heretofore understood.

**888.** From "*Le Guidon*" (A. D. 1554) we get the early law upon this subject, governing in marine insurance, and thence transferred to the fire branch, as follows, viz. :—

"If it happened that the insurers, or any of them, after having signed a policy, repent or become alarmed, or prefer not to insure upon such a ship, they are at liberty to *reassure* with others at a greater or less premium, *but cannot release themselves* so as to prevent the shipper from looking directly to them; because, being bound under their own signature, notwithstanding all protests or assignments to the contrary, they shall not be freed *without consent of the assured*." (Cleirac, *Us et Coutumes de la Mer*.)

**889.** A policy of insurance like all other contracts may be canceled by agreement of the parties; and nearly all forms of the modern policy contain a stipulation, like the condition above recited (**886**), permitting either party to cancel, with or without alleged cause, at their option.

#### GENERAL PRINCIPLES OF CANCELLATION.

**890.** The Customary Rules to be observed in the cancellation of fire insurance policies are :—

*Cancellations by order of the company* are made at pro rata rates for the time expired.

*Cancellations made by order of the insured* are made at short rates for the time the policy has been in force.

*Fractional parts of a month*, where policies for one year or longer are to be canceled, are charged as a full month. "A month begun is a month completed."

If less than one month remain, on policies for one year or over, no return premium is paid.

It is a custom in cities for companies, after finding the amount of unearned premium to be returned, to deduct therefrom the percentage of commission allowed to the agent or broker when the policy was taken.

The Nebraska Insurance Code provides for the cancellation of policies by the insured at any time ; the companies to return the net premium received after deducting the actual compensation of the agent or solicitor, and deducting the customary short-rate premium for the expired time of the full term for which the policy was issued or renewed.

#### THE LAW OF CANCELLATION

Of insurance contracts, as recognized and administered by the leading American Courts, is set forth somewhat at length, as its importance demands, in the following rulings :—

**891.** *The clause must be strictly construed* : Being a provision in the nature of a forfeiture, for the benefit of the company, and generally adverse to the wishes of the insured, it is held that its conditions must be strictly observed by the insurer.

10 Cush. Mass. 438 ; Little v. Eureka Ins. Co., Cincinnati Sup. Court.

**891a.** *Notice of cancellation* : A mere notice that in a certain event the company would cancel the policy, held not to amount to a cancellation.

Lyman v. State Mut. Ins. Co., 14 Allen Mass. 429 ; Van Valkenberg v. Lenox Ins. Co., N. Y. C. A., 2 Ins. Law Jour. 205.

When notice of cancellation was handed to the insured, containing a request to call and receive his premium, his saying "all right" before reading it is not an assent.

Peoria F. & M. Ins. Co. v. Botta, 47 Ill. 516.

**892.** A demurrer on the ground that the condition required a termination *after* election and notice, was overruled.

*Cain v. Lancashire F. I. Co.*, 27 U. C. Q. B., 217, 453.

**892a.** Where the company instructed an agent to cancel a policy, but, instead of doing so, he only notified the insured of the company's *desire to cancel*, and at the same time agreed to let the policy remain until the insured could effect another insurance. *Held*: "That the policy was not *canceled*, and the company was liable."

*Goit v. Nat. Prot. Ins. Co.*, 25 Barb. N. Y. 189; 16 Wall. U. S. 129; 33 Pa. Sta. 221; 8 Lans. N. Y. 28.

**893.** Where the company declined to continue the insurance, on account of an increase of risk, and offered to surrender the premium note without charge; insured asked for the return of cash paid by him also. Company declined to return the cash, but offered to make no assessment upon the note. Property subsequently burned. *Held*: This was notice to the insured that the company declined to assume the "increased risk," and elected to terminate the insurance under their by-law, and thereupon the policy was void.

*Fabyan v. Union Mut. F. I. Co.*, 33 N. H. 203.

**894.** Where the agent notified the insured of the cancellation of his policy, and that he would send a check for the return premium, but failed to send the check until after the fire. *Held*: Not to be a cancellation.

*Franklin F. I. Co. v. Massey*, 33 Pa. Sta. 221, *supra*; 55 Barb. New York, 28.

**894a.** *There must be notice and cancellation*, and not a mere notice that the company desires to cancel. *Held*: That "notice should precede cancellation, but they might be contemporaneous, and the company could terminate the risk by giving notice and refunding the unearned premium."

*Albany City Ins. Co. v. Keating*, 50 N. Y. 402; 33 Pa. Sta. 221, *supra*; *Grace v. Am. Cent. Ins. Co.*, 8 Ins. Law Jour. (U. S. C. C.) 95; 10 *id.* 779.

**895.** *At Option of the Company.*—Where the company's policy provided that "if during this insurance the risk be increased by the erection of buildings, or by the sale or

occupation of neighboring premises, or otherwise; or if for *any other cause* the company shall so elect, it shall be optional with the company to terminate the insurance, after notice given to the insured, or his representative, of their intention to do so; in which case the company will refund a ratable proportion of the premium (the English clause). *Held*: That "this clause constitutes a complete condition by itself, and gives the company an absolute right of election to terminate the policy at any time by giving the notice and making the payment prescribed therein. That the words, "*any other cause*," are not to be interpreted by the rule "*noscitur a sociis*," and reference to the preceding specified clause is not requisite to ascertain their meaning."

*International Life and Trust Co. v. Franklin F. I. Co., N. Y. C. A., 5 Ins. Law Jour. 571, overruling Court of Comm. Pl., N. Y. City, where it was Held*: "The causes for which the company could cancel must be of the kind before specified in the condition of the policy, and that the company could not arbitrarily cancel."

#### TENDER OF THE UNEARNED PREMIUM.

**896.** Where from any cause the insured refuses to accept the return premium, a tender should be made to him. In making such tender effective several important points should be observed.

*First*: It must be made to some person authorized to receive it, and should, for the safety of the company, be made in the presence of a witness.

1 Camp. 477; 14 Serg. and R. Pa. 307; 11 Maine 475; 2 Parson's Cont. 151.

*Second*: A tender of bank notes will be good if not objected to on that account at the time of tender.

9 Pick. Mass. 539; 1 Johns. N. Y. 476; 1 Bay S. C. 115; 5 Yerg. Tenn. 199; 8 Ohio 17; 1 Rawles. Pa. 408; 6 Harr. and J. Md. 53; 7 Mo. 558; 6 Ala. N. S. 226; 19 N. H. 569.

*Third*: The *exact* amount due must be tendered. (1 Camp. 370; 5 Mass. 365; 2 Conn. 659; 2 Ins. Law Jour. 208.) The production and counting and actual offer of the money to the party may be dispensed with if, when it is about to be produced and the amount is named, the party declares that he will not take it because more is due.

10 Cush. Mass. 267; 8 Me. 107; 15 Wend. N. Y. 637; 6 Md. 37; 51 N. Y. 465; 55 Barb. N. Y. 26; May Ins. 574.

*Fourth* : If such tender be made and refused, the party making it must hold himself ready, at all reasonable times and proper places, to pay over the sum tendered if subsequently demanded.

16 Pick Mass. 46 ; 24 *id.* 108.

*Fifth* : Such tender must be full and unqualified; that is, there must be no conditions attached to its acceptance, such as asking for a receipt or for change. (See third paragraph, *supra*.)

9 Metc. Mass. 162 ; 25 Wend. N. Y. 47 ; 23 *id.* 342 ; 18 Vt. 224 ; 1 Wis. 141.

*Sixth* : It must be made at a suitable hour of the day, during daylight.

7 Me. 31 ; 19 Vt. 587.

**896a.** On giving notice and tendering the amount of unearned premiums the company may cancel the policy. *Held* : that "In exercising such a right, however, it is clearly the duty of the company to refund the pro rata premium before cancellation is complete, as they cannot elect to cancel the policy and still hold the premium. The clause cannot by any reasonable construction be held to confer that power. By it they reserve the right to declare the contract ended and to return the money. The two acts are essential to the cancellation."

*Aetna Ins. Co. v. Maguire*, 51 Ill. 342 ; 15 Barb. N. Y. 28, *supra*.

Whatever negotiations take place between the parties, until a return or tender of the amount of the unearned premium is made, the policy remains in force. (9 C., 221 Pa.)

**897.** The company has a legal and technical right to cancel its policy by refunding the unearned premium. The plaintiff (insured) possesses no power to prevent. The return of the unearned premium is the essential part of the conditions to be performed. This is a pre-requisite to the right to terminate the risk. Notice without a return or tender of the premium would amount to nothing ; the policy would remain in force until the return or tender was made. (**895.**)

Hathorn v. Germania Ins. Co., 55 Barb. N. Y. 29; Peoria F. & M. v. Botta, 47 Ill. 516; Ætna v. Maguire, *supra*; 16 Pick. Mass. 40; 24 id. 158; 2 Ins. Law Jour. 205.

**897a.** "Call at the Office and get the return premium."

Where the insured was notified to "Call at the office and get the return premium," the Court say: "We think it incumbent on every insurance company acting under such a clause as in this policy, to tender the unearned premium with the notice of cancellation. The tender must be held to be a condition precedent, else in case of litigation growing out of the transaction the company would, all of the time, have the use of the money of the assured, and he be, to that extent, prevented from effecting any other insurance. We think that justice and fair dealing require this, as nothing short of it will put the contracting parties in *statu quo*," (Peoria F. & M. v. Botta, *supra*.)

*Held*: "It is not sufficient to say: 'Your money is ready for you, subject to your order.' The act of refunding and cancellation must be simultaneous. There is no obligation resting upon the assured to dance attendance at the place of business of an insurance company and await their pleasure. They know when they determine to cancel a policy, and forthwith, with their determination, they should tender the unearned premium; until this is done there cannot be, as we understand the condition, a cancellation." (Ætna Ins. Co. v. Maguire, *supra*.)

**898.** Where notice of cancellation was sent in November, stating that the policy would be canceled on the ensuing 6th of December, unless the premium was paid by that time, and on that day it was marked off as canceled. On the 30th December subsequent, an agent of the insured called at the office and received and receipted for the unearned premium. The property was destroyed by fire on Dec. 25, unknown to the agent who received the unearned premium, and to the company. *Held*: That "the policy was not canceled at the time of the fire. By the condition of the policy, in order to terminate the

proportion of the premium, and for this purpose the company was bound to seek the insured and tender him the amount."

**898a.** "One who has a payment to make is bound to seek his creditor, and when found to tender him the debt due. It is not the duty of the creditor to seek the debtor and demand the money."

*Van Valkenberg v. Lenox F. I. Co.*, N. Y. C. Ap., Jan., 1878; 2 *Ins. Law Jour.* 205.

An amount less than the true ratable proportion of the unearned premium will not cancel the policy. It is the duty of the company to see that enough is paid or tendered, **(896.)**

**899.** *Cancellation by Brokers and Agents.* "A broker employed to procure, modify or have a policy canceled must be regarded as the agent of the insured, and his acts are the same as if done by the insured."

106 *Eng. N. P. Com. Law R.* 381; 13 *Wend. N. Y.* 513; 21 *id.* 279; *Story Ag'cy*, 134, 135; 35 *Barb. N. Y.* 463.

"Where a policy was canceled under instruction of such a broker, if not by mistake, it was final upon the parties."

*Standard Oil Co. v. Triumph Ins. Co.*, 5 *Ins. Law Jour.* 594.

**899a.** A broker was employed to place certain insurance, which he did. Subsequently the company gave notice to the broker of the cancellation of the policy. *Held*: The notice so given was not notice to the insured, and that a clause in the policy, to the effect that the broker should be deemed to be the agent of the insured in any transaction relating to the insurance, did not affect the question.

*Von Wein v. Scottish Union and Nat. Ins. Co.*, N. Y. Sup. Court.

**900.** A broker who effects the insurance is not the agent of the insured to receive notice of cancellation. (*Keller v. N. Orleans Ins. Co.*, U. S. C. C., Mo.) "As a matter of law, the notice of cancellation to the broker who effected the insurance is not notice to the insured. The clause in the policy that the person who procures the issuance of the policy, is deemed the agent of the insured, relates and is limited to the issuance of the policy. (*Grace v. American Central Ins. Co.*, 109 U. S. S. C. 278.) It is one thing to procure a policy, and quite another to

represent a party in the cancellation of a contract. However express the mandate as to the former, it certainly does not extend to the latter, which requires for the agent express and special power.

*Corn & Son v. Pelican Ins. Co.*, Civ. Dist. Court, New Orleans.

**900a.** The case first above cited, *Grace v. Amer. Cent. Ins. Co.*, was decided in the United States Supreme Court, on appeal from the U. S. Dist. Court, New York, where the decision of the District Court was reversed. It settles the question of the policy clause making the person who procures the insurance the person to receive notice of cancellation. For further treatment as to the rights of agents to cancel policies, see the English case of *Xenos v. Wickham*, 2 House of Lords, 196, and the numerous authorities there cited.

**901.** If an agent, acting for himself, advances the premium to the company, and afterward takes the insurer's note for such premium, and negotiates it as his own, this is sufficient compliance with the policy condition requiring payment of premiums, and the company may not cancel the policy without notifying the insured and returning the unearned premium. It was of no consequence (to the company) who paid the premium.

*Home Ins. Co. O., v. Curtis*, 5 Ins. Law Jour. 120.

**902.** *An Agent cannot cancel Policies against the wish of his Companies.*—*Held*: "No general power of an agent to act for the best interests of the company can be construed into an authority to cancel policies against the wishes of his principal; and the insured were not bound by his act under any special agreement, or on any general principles of law; and the policies cannot be regarded as canceled by him." (*U. S. F. & M. Ins. Co. v. Tardy*, Sup. Court, Ala., 2 Ins. Law Jour. 672.) This was a case where the company had gone into liquidation, and Tardy, its agent at Mobile, canceled the outstanding policies for the security of his customers and himself. It will well repay any agent to study whose company ceases business while in his hands.

**903.** *Cancellations in presence of Impending Danger.*—The plaintiff covered cordwood upon the line of a railway. The

agent of the company notified the insured of the cancellation of the policy while fires were burning in the clearings and forest surrounding the cordwood. *Held*: "The company had the right to cancel the policy on giving notice and returning the premium, although the wood was in greater danger of fire than at the time when it was insured. The insurer cannot, however, cancel the policy when the fire is approaching the property insured, or in the face of threatened and approaching danger."

*Home Ins. Co., N. Y., v. Heck*, 65 Ill. 111; 2 Ins. Law Jour. 437.

**903a.** *Cancellation of one Policy to take Another.—Held*: "The claim of the policyholder to the money is not impaired by his not delivering up the policy to be canceled, it being regarded and treated both by himself and the agent as without value in their negotiations as to the return of the premium money."

*Smith v. Binder*, S. C. Ill., June, 1875.

**904.** The insured, upon learning that the insurance company in which he had an insurance has suspended, surrendered his policy to the agent, received the unearned premium, and took out a policy in another company. In an action had upon the second policy, *Held*: the first must be considered as canceled from the time of its surrender.

*Hadley v. N. H. Fire Ins. Co.*, 4 Ins. Law Jour. 611; 55 N. H. 110.

**904a.** When, in pursuance of an arrangement made with an agent, a new policy was taken out, and at the same time an old policy in another company was surrendered, with instructions to cancel as of that date. *Held*: That, as between the insured and the former company, in a question of further insurance, the old policy was to be deemed canceled as of the date stated, though not actually received and canceled by the company until afterward.

*Atlantic Ins. Co. v. Goodall*, 35 N. H. 328.

**905.** The insured surrendered his policy in Company A to the agent for cancellation, and requested him to obtain other insurance in a good company, and credit return premium on policy of Company A. Agent procured insurance in Company K, but

neglected to cancel policy of Company A, or return it to the company. No return premium was paid upon it. After the fire the insured took the policy from the agent. In an action against Company A for the amount of the policy, defence was made of "other insurance" without consent. *Held*: "If there was an engagement between the agent and the insured, the surrender of the policy of Company A was a virtual cancellation, and the subsequent re-possession of the policy may have been an assertion that it had not been surrendered, or simply a precautionary act, and was a question for the jury." (*Train v. Holland Pur. Ins. Co.*, 5 Ins. Law Jour. 177.)

**905a.** Where R, agent of the insured, procured a policy in Company H from its agent, C, and Company H requested a reduction of amount or cancellation, C wrote to R to reduce the amount or let him place the hotel in another company, of which he was also the agent. R desired C to place the whole in the L company, and sent back the H policy to be "canceled," the unearned premium to pay the premium on the L policy. On receipt of the H policy, C marked it "canceled," and, with the amount of unearned premium, put it into his safe, intending to take them to R the next day, but did not go; nor did he make out the policy in the L company as agreed. In the meantime the property burned, the owner knowing nothing of the proposed change of policy, and R not knowing that the change had not been completed. The policy contained the customary cancellation clause; C sent the amount of unearned premium to R after the fire. *Held*: The agreement was to cancel, coupled with a re-insurance, and it had not been complied with by C, therefore the H company could not insist upon the cancellation; there had been no agreement of parties. The premium had not been returned in compliance with the policy provision, and whether C acted as agent of one company or both in the matter was a question of fact and not of law.

*Poor v. Hudson Ins. Co.*, U. S. C. C. N. H. (May, 1880), 9 Ins. Law Jour. 428.

**906.** *Where notes were given for the premiums.*—"Where the policy acknowledges the receipt of the premium, and the

insured has a subsequent right to a return of premium, he may recover for money had and received, though, in truth, he gave a promissory note for the premium, and the note remains unpaid."

*Hemmenway v. Bradford*, 14 Mass. 121; 101 *id.* 558.

**906a.** Policy issued *loss payable to* a building association; a note given for the premium was protested for non-payment at maturity. After three months the company notified the Building association of the cancellation of the policy, for non-payment of premium. The property was destroyed by fire during the original term of the policy. The company denied all liability. *Held*: "Notice of cancellation was requisite upon M (the insured), or his representatives, not on both. No one could better answer as a representative than he who had the custody of the policy, and would be entitled to the money in case of loss. The notice was sufficient, and the cancellation took effect from the service. The company had received no money. No *legerdemain* would make that protested note appear as cash, since the company had nothing on which to refund a ratable proportion."

*South Side F. I. Co. v. Mueller*, Sup. U. Pa., Nov. 18, 1878.

**906b.** Where a policy provided that if a note taken for premium be not paid at maturity, the policy should be void. *Held*: "The company must exercise its option to cancel in order to terminate the policy for non-payment of the note. That when the policy had been thus canceled, the fact that the note was only paid after the loss, and without notifying the company of the loss, would not affect the liability."

*Western Horse Ins. Co. v. Sheidle*, S. C. Neb., Dec. 1, 1885, 15 *Ins. Law Jour.* 204.

**907.** *Due-bill given for Return Premium.*—Where the agent canceled a policy and gave the insured—an illiterate woman—a due-bill, or certificate, in the name of the company, for the unearned premium. A fire occurred before the due-bill was paid. *Held*: "When a due-bill or certificate of indebtedness is given for the return premium, it is properly left to the jury to decide whether such instrument is accepted as payment or only as an evidence of indebtedness."

*Home Ins. Co., N. Y., v. Tighe*, Sup. Court Pa.

**907a.** *Where the premium has been paid to the broker, but not by him paid over to the company.*—A broker took out a policy wherein the payment of the premium was acknowledged by the company. The insured sued the company to recover the return premium and have the policy canceled, and he simply gave in evidence the policy itself, wherein the receipt of the premium was acknowledged. *Held:* That this acknowledgment as between the company and the insured estopped the company from saying that the broker had not paid the premium.

1 Camp. 532; 4 Taunt. 243; 20 Wall. U. S. 560.

**908.** *Invalid policies.*—Where the policy reserved the right to cancel and the company gave notice to the insured (who had not paid the premium, but had assigned the policy without the company's consent) that unless the premium was paid on a certain day, the policy would be canceled on that day. The premium was not paid, and a loss occurred subsequently. *Held:* "The company had a right to treat the policy as canceled on the designated day; and no further act was required of them after the rescission of the contract."

*Bergson v. Builders' Ins. Co.*, 38 Cal. 541; *Coles v. Iowa State Mut. Ins. Co.*, 13 Iowa 426; *Emmett v. State Mut. F. I. Co.*, 7 R. I. 562.

**908a.** *Notice of cancellation is not necessary where a policy is voided for breach of contract.* *Held:* "The policy is void *ipso facto* by the act of the insured in obtaining additional insurance, and cancellation by the company is unnecessary." (**908.**)

*Rayfield, Riggen & Co. v. Farm. Mut. Co.*, Del., U. S. C. C., Md.

**909.** *Endorsement of cancellation upon the policy not necessary.*—A surrender of the policy by the insured to the authorized agent of the company, with the intention on the part of both that it should no longer be a contract between the insured and the company, was, in effect, a cancellation of it, and any physical defacement of the policy is unnecessary. It was a giving up of the contract by the insured, and a "taking of it up" (which was the language of the agreement) by the agent.

That the agent did not send it to the company as he was to do, did not affect the insured, for he had put it in the agent's power to do so, and as to the insured, the contract was annulled. (*Train v. Holland Pur. Co.*, N. Y. C. App., 5 Ins. Law Jour. 177.)

**909a. Cancellation of Policies in hands of third parties.**—

An agent issues a policy to B, with "*loss, if any, payable to C*," to whom the policy is given by B, as security. The agent pays the premium to the company, but gives B credit therefor. B fails to pay the premium, and the agent demands the policy for cancellation "*for non-payment of the premium.*" C, the payee, refuses to surrender the policy and thus lose his security against B.

The agent cannot cancel the policy under the above cited circumstances for non-payment of premium, for, as between the company and the insured, *the premium has been paid*; by whom paid is to the company a matter of no consequence. (5 Ins. Law Jour. 120.) The amount of the unpaid premium is a simple matter of debt between the insured and the agent in which the company has no interest; and the agent has no authority to cancel a policy for an unpaid debt due to himself, even though the debt may be for a premium which he has paid for the insured. When an agent pays, or assumes the premium, he has a lien on the policy for the amount *only so long as he retains such policy in his possession*; if delivered to the insured, his lien goes with it; and in the event of loss under the policy, he cannot stand in the place of the company and claim payment out of the sum due the insured thereunder. (5 Binn. Pa. 538.)

The payee, C, is neither the insured nor owner of the policy; he is unknown to the company except as payee in the event of loss under the policy, and then only to the extent of such loss as may be payable to B by the terms of the policy; in any other money paid to B by the company, he has no shadow of interest.

*Martin v. Franklin F. L. Co.*, 5 Ins. Law Jour. 144; 10 Cush Mass. 433; 3 Gray Mass. 28; *Ketchum v. Ins. Co.*, S. C. N. B. (1 Allen 136). 2 Benn. F. I. Cases 198.

The insured B is the sole owner of the policy; the contract is with him only; and he only, under its conditions, can cancel

it at any time he sees fit to do so. (10 Cush. Mass. 433.) Or he may sell the property, and thus render the policy void for want of interest; and when the interest of B in the policy ceases *from any cause*, the interest of C, as payee, ceases also. The mortgage contract is between B and C, in which the company has no interest whatever. (10 Wall. U. S. 33.)

In case of the refusal of C, the payee, to surrender the policy for cancellation, a release from B, acknowledging a consideration for the surrender, and releasing the company from all further liability under the policy (duly described in the release, with the reasons why it was not then surrendered) would be a valid cancellation, upon the broad principle that the parties who made the contract can unmake it upon mutual agreement so to do.

10 Cush. 433; 33 Mich. 133.

On the other hand again, the agent, as the representative of his company, has the option, under the customary cancellation clause of the policy, to cancel any policy, at any time, and in the hands of any party, on giving the proper notice *to the insured* of such rescission, *and returning or tendering* the full amount of unearned premium *to the insured*.

33 N. Hamp. 203; 47 Ills. 616; 24 Barb. N. Y. 159.

**910. Cancellation after a Loss.**—Under the cancellation clause, either party to the contract has the option to rescind the contract at any time; the occurrence of a fire loss to any part of the property at risk does not affect this option. The right of cancellation is operative as long as there remains any portion of the policy at risk that can be canceled. If an insurance of \$1,000 suffer a loss of \$500 only, the remaining \$500 is subject to cancellation for the unexpired portion of its term, by either party, the same as if that had been the original sum of the policy and no loss had occurred. Had the loss reached \$1,000, the face of the insurance, there would have remained nothing to cancel; the policy having been exhausted, the company on paying the loss became entitled to all of the premium, having fulfilled its contract

to the letter. (*Brown v. British America Assur. Co.*, 25 U. C. C. P. 514.)

**911. Reasonable Notice of Intention to cancel should be given.**—The plaintiffs procured a *renewal* of a policy upon a steambot, reserving to the company the right of *cancellation*. On the day following the defendants instructed their general agent to get a higher rate of premium or *cancel* the policy, but without limiting the time within which this was to be done. Insured's agent declined to pay a higher rate, but asked and received time till the next day to substitute another policy; on the next day the time was extended to the day following, when a policy in another company was procured and exchanged for the defendant's, and the latter was delivered to the defendant's agent as *canceled*, insured having no knowledge of the change. On the night prior to the exchange of the policy the boat was burned. *Held*: "The delay granted was not unreasonable, nor an abuse of discretion upon the part of the defendant's agent; that until there was an *actual cancellation* of the insurance, it continued—not by force of any agreement made by the agents, but by force of the renewal of the policy; the insured *was entitled to reasonable notice of the determination of the company to cancel such risk*; and where the company omitted to prescribe the time within which the process of *cancellation* should be perfected, and intrusted the same to its agent, nothing short of an absolute abuse of discretion by the agent, or fraud on his part, would relieve the principal from liability."

*Mellean v. Repub. Ins. Co.*, 3 Lans. N. Y. 425; *Goit v. Nat. Protection Ins. Co.*, 25 Barb. N. Y. 189.

By statute and the Standard policy of Massachusetts, ten days' notice of intended cancellation must be given by the company. By the New York Standard policy five days' notice must be given.

**911a. Policy under seal.**—The cancellation of a sealed policy, by tearing off the seal, *animo cancellandi*, with the intention to cancel it, is a legal cancellation.

*Ramsay W. C. Mf. Co. v. Mutual Ins. Co.*, 11 U. C. Q. B. 516; *Miall v. Western Assur. Co.*, 19 U. C. C. P. 270, 276.

**912. UNIFORM SHORT RATE TABLE**  
OF THE NEW YORK BOARD OF FIRE UNDERWRITERS.

ANNUAL RATE.	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	110	125	150	175	200	225	250	275	300	325	350	375	400	450	500
2 Days, . . . . .	1	1	1	2	2	2	2	2	2	3	3	3	3	3	3	4	4	5	6	7	8	8	9	10	11	12	13	13	15	17
5 Days, . . . . .	2	2	3	3	3	4	4	4	4	5	5	5	6	6	7	7	8	10	12	13	15	17	18	20	22	23	25	27	30	33
10 Days, . . . . .	3	4	4	5	5	6	6	7	7	8	8	9	9	10	10	11	13	15	18	20	23	25	28	30	33	35	38	40	45	50
15 Days, . . . . .	4	5	5	6	7	7	8	9	9	10	11	11	12	13	13	15	17	20	23	27	30	33	37	40	43	47	50	53	60	67
20 Days, . . . . .	5	6	7	8	8	9	10	11	12	13	13	14	15	16	17	18	21	25	29	33	38	42	46	50	54	58	63	67	75	83
1 Month, . . . . .	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	22	25	30	35	40	45	50	55	60	65	70	75	80	90	100
2 Months, . . . . .	9	11	12	14	15	17	18	20	21	23	24	26	27	29	30	33	38	45	53	60	68	75	83	90	98	105	113	120	135	150
3 Months, . . . . .	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	44	50	60	70	80	90	100	110	120	130	140	150	160	180	200
4 Months, . . . . .	15	18	20	23	25	28	30	33	35	38	40	43	45	48	50	55	63	75	88	100	113	125	138	150	163	175	188	200	225	250
5 Months, . . . . .	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60	66	75	90	105	120	135	150	165	180	195	210	225	240	270	300
6 Months, . . . . .	21	25	28	32	35	39	42	46	49	53	56	60	63	67	70	77	88	105	123	140	158	175	193	210	228	245	263	280	315	350
7 Months, . . . . .	23	26	30	34	38	41	45	49	53	56	60	64	68	71	75	83	94	113	131	150	169	188	206	225	244	263	281	300	338	375
8 Months, . . . . .	24	28	32	36	40	44	48	52	56	60	64	68	72	76	80	88	100	120	140	160	180	200	220	240	260	280	300	320	360	400
9 Months, . . . . .	26	30	34	38	43	47	51	55	60	64	68	72	77	81	85	94	106	128	149	170	191	213	234	255	276	298	319	340	383	425
10 Months, . . . . .	27	32	36	41	45	50	54	59	63	68	72	77	81	86	90	99	113	135	158	180	203	225	248	270	293	315	338	360	405	450
11 Months, . . . . .	29	33	38	43	48	52	57	62	67	71	76	81	86	90	95	105	119	143	166	190	214	238	261	285	309	333	356	380	428	475

The upper row of figures gives the premium rates; the figures below show the short rate, at each annual rate, from 2 days to 11 months.

**913.** For Periods of One, Two, Three, Four and Five Years.

This is the rule for the cancellation of long term policies, in a tabulated form, and is simply an extension of the annual short-rate table to corresponding longer periods, in monthly proportions, as nearly as the fractions will admit of. Its use will save time and labor in calculations, and it will be found sufficiently accurate for all practical purposes.

The left hand figures 1 to 12 in the 2, 3, 4, 5 years columns are the monthly equivalents to the one year column.

TIME EXPIRED	ONE YEAR.	TWO YEARS.	THREE YEARS.	FOUR YEARS.	FIVE YEARS.
Month.	per cent.	per cent.	per cent.	per cent.	per cent.
1	20	13	10	08½	07½
2	30	1 20	17	13	11½
3	40	25	1 20	18	15½
4	50	2 30	23½	1 20	18
5	60	35	27	22½	1 20
6	70	3 40	2 30	25	23
7	75	45	33½	27½	24
8	80	4 50	37	2 30	26
9	85	55	3 40	32½	28
10	90	60	43½	35	2 30
11	95	65	47	37½	32
12	100	6 70	4 50	3 40	34
13	.....	72½	53½	42½	36
14	.....	7 75	57	45	38
15	.....	77½	5 60	47½	3 40
16	.....	8 80	63½	4 50	42
17	.....	82½	67	52½	44
18	.....	9 85	6 70	55	46
19	.....	87½	72	57½	48
20	.....	10 90	73½	5 60	4 50
21	.....	92½	7 75	62½	52
22	.....	11 95	77½	65	54
23	.....	97½	79	67½	56
24	.....	12 100	8 80	6 70	58
25	.....	.....	81½	71	5 60
26	.....	.....	83	72½	63
27	.....	.....	9 85	74	64
28	.....	.....	86½	7 75	66
29	.....	.....	88	76	68
30	.....	.....	10 90	77½	6 70
31	.....	.....	91½	79	71
32	.....	.....	93	8 80	72
33	.....	.....	11 95	81	73
34	.....	.....	96½	82½	74
35	.....	.....	98	84	7 75
36	.....	.....	12 100	9 85	76
37	.....	.....	.....	86	77
38	.....	.....	.....	87½	78
39	.....	.....	.....	89	79
40	.....	.....	.....	10 90	8 80
41	.....	.....	.....	91	81
42	.....	.....	.....	92½	82
43	.....	.....	.....	94	83
44	.....	.....	.....	11 95	84
45	.....	.....	.....	96	9 85
46	.....	.....	.....	97½	86
47	.....	.....	.....	99	87
48	.....	.....	.....	12 100	88
49	.....	.....	.....	.....	89
50	.....	.....	.....	.....	10 90
51	.....	.....	.....	.....	91
52	.....	.....	.....	.....	92
53	.....	.....	.....	.....	93
54	.....	.....	.....	.....	94
55	.....	.....	.....	.....	11 95
56	.....	.....	.....	.....	96
57	.....	.....	.....	.....	97
58	.....	.....	.....	.....	98
59	.....	.....	.....	.....	99
60	.....	.....	.....	.....	12 100

**EXAMPLE.**—A policy for \$5,000 at three per cent. for five years—premium \$150—is canceled after running twenty-nine months in the column headed “five years,” opposite 29 months, we find 68, which is the percentage of the premium earned, 68 per cent. of \$150=\$102. The difference, \$48, is the amount of unearned premium.

## 914. PRO RATA CANCELLATION TABLE

## OF CONSTANT MULTIPLIERS

FOR

COMPUTING EARNED AND UNEARNED PRO RATA PREMIUMS

Casting Interest for any Number of Days at any  
Given Rate per Cent.

AND GENERALLY TO COMPUTE CURRENT BUSINESS EXPENDITURES  
FOR BROKEN PERIODS OF TIME.

365 DAYS TO THE YEAR.

Days.	Multiply by	Days.	Multiply by	Days.	Multiply by	Days.	Multiply by
1	.274	51	13.973	101	27.671	151	41.370
2	.548	52	14.247	102	27.945	152	41.644
3	.822	53	14.521	103	28.219	153	41.918
4	1.096	54	14.795	104	28.493	154	42.192
5	1.370	55	15.069	105	28.767	155	42.466
6	1.644	56	15.342	106	29.041	156	42.740
7	1.918	57	15.616	107	29.315	157	43.014
8	2.192	58	15.890	108	29.589	158	43.288
9	2.466	59	16.164	109	29.863	159	43.562
10	2.740	60	16.438	110	30.137	160	43.836
11	3.014	61	16.712	111	30.411	161	44.110
12	3.288	62	16.986	112	30.685	162	44.384
13	3.562	63	17.260	113	30.959	163	44.658
14	3.836	64	17.534	114	31.233	164	44.932
15	4.110	65	17.808	115	31.507	165	45.206
16	4.384	66	18.082	116	31.781	166	45.480
17	4.658	67	18.356	117	32.055	167	45.754
18	4.932	68	18.630	118	32.329	168	46.028
19	5.206	69	18.904	119	32.603	169	46.302
20	5.479	70	19.178	120	32.877	170	46.576
21	5.753	71	19.452	121	33.151	171	46.850
22	6.027	72	19.726	122	33.425	172	47.124
23	6.301	73	20.000	123	33.699	173	47.398
24	6.575	74	20.274	124	33.973	174	47.672
25	6.849	75	20.548	125	34.247	175	47.946
26	7.123	76	20.822	126	34.521	176	48.220
27	7.397	77	21.096	127	34.795	177	48.494
28	7.671	78	21.370	128	35.069	178	48.768
29	7.945	79	21.644	129	35.343	179	49.042
30	8.219	80	21.918	130	35.617	180	49.316
31	8.493	81	22.192	131	35.891	181	49.590
32	8.767	82	22.466	132	36.165	182	49.864
33	9.041	83	22.740	133	36.439	183	50.138
34	9.315	84	23.014	134	36.713	184	50.412
35	9.589	85	23.288	135	36.987	185	50.686
36	9.863	86	23.562	136	37.261	186	50.960
37	10.137	87	23.836	137	37.535	187	51.234
38	10.411	88	24.110	138	37.809	188	51.508
39	10.685	89	24.384	139	38.083	189	51.782
40	10.959	90	24.658	140	38.357	190	52.056
41	11.233	91	24.932	141	38.631	191	52.330
42	11.507	92	25.206	142	38.905	192	52.604
43	11.781	93	25.480	143	39.179	193	52.878
44	12.055	94	25.754	144	39.453	194	53.152
45	12.329	95	26.028	145	39.727	195	53.426
46	12.603	96	26.302	146	40.001	196	53.700
47	12.877	97	26.576	147	40.275	197	53.974
48	13.151	98	26.850	148	40.549	198	54.248
49	13.425	99	27.124	149	40.823	199	54.522
50	13.699	100	27.398	150	41.097	200	54.796

# **914a. PRO RATA CANCELLATION TABLE**

## **OF CONSTANT MULTIPLIERS**

FOR

COMPUTING EARNED AND UNEARNED PRO RATA PREMIUMS

**Calculating Interest for any Number of Days at any  
Given Rate per Cent.**

AND GENERALLY TO COMPUTE CURRENT BUSINESS EXPENDITURES  
FOR BROKEN PERIODS OF TIME.

**365 DAYS TO THE YEAR.**

Days.	Multiply by	Days.	Multiply by	Days.	Multiply by	Days.	Multiply by
201	55.069	251	68.767	301	82.466	351	96.164
202	55.342	252	69.041	302	82.740	352	96.438
203	55.616	253	69.315	303	83.014	353	96.712
204	55.890	254	69.589	304	83.288	354	96.986
205	56.164	255	69.863	305	83.562	355	97.260
206	56.438	256	70.137	306	83.836	356	97.534
207	56.712	257	70.411	307	84.110	357	97.808
208	56.986	258	70.685	308	84.384	358	98.082
209	57.260	259	70.959	309	84.658	359	98.356
210	57.534	260	71.233	310	84.932	360	98.630
211	57.808	261	71.507	311	85.206	361	98.904
212	58.082	262	71.781	312	85.479	362	99.178
213	58.356	263	72.055	313	85.753	363	99.452
214	58.630	264	72.329	314	86.027	364	99.726
215	58.904	265	72.603	315	86.301	365	100.000
216	59.178	266	72.877	316	86.575	<b>FRACTIONS OF A DAY.</b>	
217	59.452	267	73.151	317	86.849	Day.	Multiplier.
218	59.726	268	73.425	318	87.123	1-5	.065
219	59.999	269	73.699	319	87.397	1-4	.069
220	60.274	270	73.973	320	87.671	1-3	.081
221	60.548	271	74.247	321	87.945	1-2	.137
222	60.822	272	74.521	322	88.219	<i>Work same as for whole days.</i>	
223	61.096	273	74.795	323	88.493	<b>Number of Days in Years in excess of Five.</b>	
224	61.370	274	75.069	324	88.767	Years.	Days.
225	61.644	275	75.342	325	89.041	6	2190
226	61.918	276	75.616	326	89.315	7	2555
227	62.192	277	75.890	327	89.589	8	2920
228	62.466	278	76.164	328	89.863	9	3285
229	62.740	279	76.438	329	90.137	10	3650
230	63.014	280	76.712	330	90.411	11	4015
231	63.288	281	76.986	331	90.685	12	4380
232	63.562	282	77.260	332	90.959	13	4745
233	63.836	283	77.534	333	91.233	14	5110
234	64.110	284	77.808	334	91.507	15	5475
235	64.384	285	78.082	335	91.781	16	5840
236	64.658	286	78.356	336	92.055	17	6205
237	64.932	287	78.630	337	92.329	18	6570
238	65.206	288	78.904	338	92.603	19	6935
239	65.479	289	79.178	339	92.877	20	7300
240	65.753	290	79.452	340	93.151		
241	66.027	291	79.726	341	93.425		
242	66.301	292	80.000	342	93.699		
243	66.575	293	80.274	343	93.973		
244	66.849	294	80.548	344	94.247		
245	67.123	295	80.822	345	94.521		
246	67.397	296	81.096	346	94.795		
247	67.671	297	81.370	347	95.069		
248	67.945	298	81.644	348	95.342		
249	68.219	299	81.918	349	95.616		
250	68.493	300	82.192	350	95.890		

## 915. TIME TABLES

SHOWING THE NUMBER OF DAYS INTERVENING

BETWEEN ANY TWO GIVEN DATES,

*For Any Period of Time,*

FROM ONE DAY TO FIVE YEARS.

1st Month JANUARY. 31 Days										2nd Month FEBRUARY. 28 Days																			
Months					1 Yr.					2 Yrs.					3 Yrs.					4 Yrs.					5 Yrs.				
Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.			
Feb.	1	31	13	36	25	761	37	1126	49	1491		Mar.	1	28	13	393	25	758	37	1123	49	1488							
Mar.	2	59	14	42	26	780	38	1154	50	1519		Apr.	2	59	14	424	26	780	38	1154	50	1519							
Apr.	3	90	15	45	27	820	39	1185	51	1550		May	3	89	15	454	27	819	39	1151	51	1549							
May	4	120	16	48	28	850	40	1215	52	1580		June	4	120	16	485	28	850	40	1215	52	1580							
June	5	151	17	51	29	881	41	1246	53	1611		July	5	150	17	515	29	880	41	1245	53	1610							
July	6	181	18	54	30	911	42	1276	54	1641		Aug.	6	181	18	545	30	911	42	1276	54	1641							
Aug.	7	212	19	57	31	942	43	1307	55	1672		Sep.	7	212	19	577	31	942	43	1307	55	1672							
Sep.	8	243	20	60	32	973	44	1338	56	1703		Oct.	8	242	20	607	32	972	44	1337	56	1702							
Oct.	9	273	21	63	33	1003	45	1368	57	1733		Nov.	9	273	21	638	33	1003	45	1368	57	1733							
Nov.	10	304	22	66	34	1034	46	1399	58	1764		Dec.	10	303	22	668	34	1033	46	1367	58	1763							
Dec.	11	334	23	69	35	1064	47	1429	59	1794		Jan.	11	334	23	699	35	1064	47	1429	59	1794							
Jan.	12	365	24	72	36	1095	48	1460	60	1825		Feb.	12	365	24	730	36	1065	48	1460	60	1825							

3rd Month MARCH. 31 Days										4th Month APRIL. 30 Days																			
Months					1 Yr.					2 Yrs.					3 Yrs.					4 Yrs.					5 Yrs.				
Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.			
Apr.	1	31	13	36	25	761	37	1126	49	1491		May	1	30	13	395	25	760	37	1125	49	1490							
May	2	61	14	42	26	791	38	1156	50	1521		June	2	61	14	426	26	791	38	1156	50	1521							
June	3	92	15	45	27	822	39	1187	51	1552		July	3	91	15	456	27	821	39	1186	51	1551							
July	4	123	16	48	28	852	40	1217	52	1582		Aug.	4	122	16	487	28	852	40	1217	52	1582							
Aug.	5	153	17	51	29	883	41	1248	53	1612		Sep.	5	153	17	518	29	883	41	1248	53	1612							
Sep.	6	184	18	54	30	913	42	1279	54	1643		Oct.	6	183	18	548	30	913	42	1278	54	1643							
Oct.	7	214	19	57	31	944	43	1309	55	1674		Nov.	7	214	19	579	31	944	43	1309	55	1674							
Nov.	8	245	20	60	32	975	44	1340	56	1705		Dec.	8	244	20	609	32	974	44	1339	56	1705							
Dec.	9	275	21	63	33	1005	45	1370	57	1735		Jan.	9	275	21	640	33	1005	45	1370	57	1735							
Jan.	10	306	22	66	34	1036	46	1401	58	1766		Feb.	10	306	22	671	34	1036	46	1401	58	1766							
Feb.	11	337	23	69	35	1067	47	1432	59	1797		Mar.	11	334	23	699	35	1064	47	1429	59	1794							
Mar.	12	365	24	72	36	1095	48	1460	60	1825		Apr.	12	365	24	730	36	1095	48	1460	60	1825							

5th Month MAY. 31 Days										6th Month JUNE. 30 Days																			
Months					1 Yr.					2 Yrs.					3 Yrs.					4 Yrs.					5 Yrs.				
Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.		Mo.		Days.			
June	1	31	13	36	25	761	37	1126	49	1491		July	1	30	13	395	25	760	37	1125	49	1490							
July	2	61	14	42	26	791	38	1156	50	1521		Aug.	2	61	14	426	26	791	38	1156	50	1521							
Aug.	3	92	15	45	27	822	39	1187	51	1552		Sep.	3	92	15	457	27	822	39	1187	51	1552							
Sep.	4	123	16	48	28	852	40	1217	52	1582		Oct.	4	122	16	487	28	852	40	1217	52	1582							
Oct.	5	153	17	51	29	883	41	1248	53	1612		Nov.	5	153	17	518	29	883	41	1248	53	1612							
Nov.	6	184	18	54	30	913	42	1279	54	1643		Dec.	6	183	18	548	30	913	42	1278	54	1643							
Dec.	7	214	19	57	31	944	43	1309	55	1674		Jan.	7	214	19	579	31	944	43	1309	55	1674							
Jan.	8	245	20	60	32	975	44	1340	56	1705		Feb.	8	244	20	609	32	974	44	1339	56	1705							
Feb.	9	275	21	63	33	1005	45	1370	57	1735		Mar.	9	275	21	640	33	1005	45	1370	57	1735							
Mar.	10	306	22	66	34	1036	46	1401	58	1766		Apr.	10	306	22	671	34	1036	46	1401	58	1766							
Apr.	11	337	23	69	35	1067	47	1432	59	1797		May	11	334	23	699	35	1064	47	1429	59	1794							
May	12	365	24	72	36	1095	48	1460	60	1825		June	12	365	24	730	36	1095	48	1460	60	1825							

7th Month		JULY.					8th Month		AUGUST.				
		1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.			1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.
Months.	Mo.	Days.	Mo.	Days.	Mo.	Days.	Months.	Mo.	Days.	Mo.	Days.	Mo.	Days.
Aug.	1	31	13	306	25	761	37	1126	49	1491			
Sep.	2	62	14	427	26	792	38	1157	50	1522			
Oct.	3	92	15	457	27	822	39	1187	51	1552			
Nov.	4	122	16	487	28	853	40	1218	52	1583			
Dec.	5	153	17	518	29	883	41	1248	53	1613			
Jan.	6	184	18	548	30	914	42	1279	54	1644			
Feb.	7	215	19	580	31	945	43	1310	55	1675			
Mar.	8	245	20	609	32	973	44	1340	56	1703			
Apr.	9	274	21	638	33	1004	45	1369	57	1734			
May	10	304	22	669	34	1034	46	1399	58	1764			
June	11	335	23	700	35	1065	47	1430	59	1795			
July	12	365	24	730	36	1095	48	1460	60	1825			

9th Month		SEPTEMBER.					10th Month		OCTOBER.				
		1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.			1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.
Months.	Mo.	Days.	Mo.	Days.	Mo.	Days.	Months.	Mo.	Days.	Mo.	Days.	Mo.	Days.
Oct.	1	30	13	305	25	760	37	1125	49	1490			
Nov.	2	61	14	426	26	791	38	1156	50	1521			
Dec.	3	91	15	456	27	821	39	1186	51	1551			
Jan.	4	122	16	487	28	852	40	1217	52	1582			
Feb.	5	153	17	518	29	883	41	1248	53	1613			
Mar.	6	184	18	548	30	914	42	1279	54	1644			
Apr.	7	215	19	577	31	945	43	1307	55	1675			
May	8	245	20	607	32	975	44	1337	56	1705			
June	9	275	21	638	33	1005	45	1368	57	1735			
July	10	305	22	669	34	1035	46	1398	58	1765			
Aug.	11	335	23	699	35	1065	47	1428	59	1795			
Sep.	12	365	24	730	36	1095	48	1459	60	1825			

11th Month		NOVEMBER.					12th Month		DECEMBER.				
		1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.			1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.
Months.	Mo.	Days.	Mo.	Days.	Mo.	Days.	Months.	Mo.	Days.	Mo.	Days.	Mo.	Days.
Dec.	1	30	13	305	25	760	37	1125	49	1490			
Jan.	2	61	14	426	26	791	38	1156	50	1521			
Feb.	3	92	15	457	27	822	39	1187	51	1552			
Mar.	4	120	16	485	28	850	40	1215	52	1580			
Apr.	5	151	17	516	29	881	41	1246	53	1611			
May	6	181	18	546	30	911	42	1276	54	1641			
June	7	212	19	577	31	942	43	1307	55	1672			
July	8	242	20	607	32	972	44	1337	56	1702			
Aug.	9	273	21	638	33	1003	45	1368	57	1733			
Sep.	10	304	22	669	34	1034	46	1399	58	1764			
Oct.	11	334	23	699	35	1064	47	1429	59	1794			
Nov.	12	365	24	730	36	1095	48	1460	60	1825			

LEAP YEARS:—1888, 1892, 1896, 1904, 1908, 1912, 1916, 1920.

Add one day.

## HOW TO USE THE TIME TABLES.

THERE ARE TWELVE CALENDAR MONTHLY TABLES.

**916.** To manipulate the TABLES with facility and satisfaction, the following preliminaries should be well understood, viz.:

1.—*Expired Time* represents *Earned Premiums*.

*Unexpired Time* represents *Unearned Premiums*.

2.—To commence on a given day begins with the day, unless an hour is named; a day begins and ends at 12 o'clock, midnight. A day begun is held a day complete.

3.—In computations of time *from* one date to another the month or day of commencement is excluded. Thus: the January table commences with February; while with days, *from* January 1 to January 21 are but 20 days, the first being excluded.

4.—Fractional portions of a year: When months extend into the next or succeeding year, the computation will fall under the terminal period. Thus 18 months will be worked under the 2 years' column: 2 years and odd months under the 3 years' column, and so with 3 and 4 years and odd months.

5.—Leap year: It is customary in mercantile transactions, banking and insurance, when the computation is by days, to count the intercalary day—February 29—as an additional day. But in the issuing of law processes, February 29 is held to be *dies non juridicus*, or “no day,” the 28th and 29th forming but one day. A policy dated August 28, 29, or 30, for six months will expire Febr. 28th or 29th, as the case may be.

6.—Fractional days in a month: In these tables the number of days intervening between two given dates are from a certain day in the initial month to the *same* day in the terminal month. Should the days named in the initial month exceed those of the terminal month, deduct the excess. If, on the other hand, the days of the terminal month exceed those of the initial month, add the excess.

*From* January 1 to May 21 will be days  $120+20=140$ .

*From* January 21 to May 1 will be days  $120-20=100$ .

**917.** To ascertain the number of expired or unexpired months or days intervening between any two periods: Out of the twelve monthly tables, select that of the initial month from which the time begins to run; in the left hand column of this table find the terminal month during which the time ceases to run; in the angle of the columns of years, 1, 2, 3, 4 or 5, as the case may be, will be found the number of months and of days intervening, plus or minus the difference between the days of commencement and of termination (see No. 6).

**918.** For periods in excess of five years, find the number of months or days within the five years, and add thereto 12 months, or 365 days, for each additional year, *ad infinitum*, due allowance being made for the occurrence of leap year during the period. To facilitate this computation the number of months and of days in any number of years within the five, will be found at the foot of the respective yearly columns in each of the tables.

**919.** As the number of days in the several months, or any combination of months, vary materially, care should be exercised to work the tables by the appropriate month to avoid errors.

A legal or calendar year contains 12 months or 365 days.

A legal or calendar half year contains 6 months or 182 days.

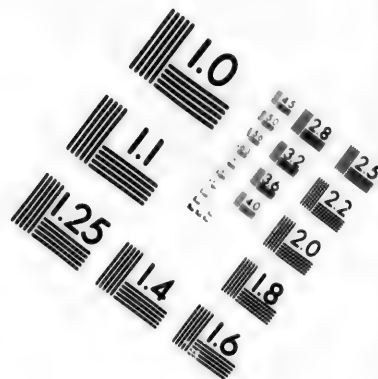
A legal or calendar quarter year contains 3 months or 92 days.

An average month, when no particular month is specified, contains 30.417 days; estimates based upon this figure will approximate correct results sufficiently for all practical purposes.

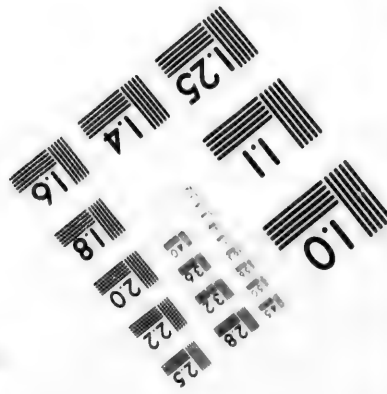
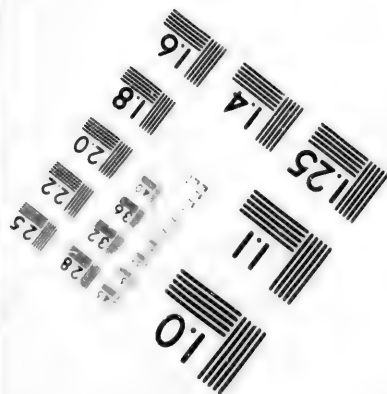
**920.** A policy written for one year from Jan. 1 was, on the 10th of the next April, reduced in amount one-half, and the remainder extended 18 months: When will the policy expire?

*Solution:* From January 1 to April 10 are 3 months and 9 days, plus 18 months extended time, equal to 21 months and 9 days; which time will fall under the 2 years' column where the expiration appears opposite 21 months, as October 9, of 2nd year.

**921.** A policy written April 1, 1883, for five years, is to be canceled in February, 1886, the third year: What will be the expired time? Turning to the April table, opposite February in the angle of the 3rd year, we find the answer, 34 months or 1036 days, plus or minus the difference between the days in the initial and the terminal month, if any.



A resolution test chart featuring several groups of horizontal and vertical lines of varying thicknesses. Each group is accompanied by a numerical value indicating the resolution. The values include 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, 4.5, 5.0, 5.6, 6.3, 7.1, 8.0, 9.0, 10, 11.2, 12.5, 14, 16, 18, 20, 22.5, 25, 28, 32, 36, 40, 45, 50, 56, 63, 71, 80, 90, 100, 112, 125, 140, 160, 180, 200, 224, 250, 280, 315, 360, 400, 450, 500, 560, 630, 710, 800, 900, 1000, 1120, 1250, 1400, 1600, 1800, 2000, 2240, 2500, 2800, 3150, 3600, 4000, 4500, 5000, 5600, 6300, 7100, 8000, 9000, 10000.



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## TABLE OF CONSTANT MULTIPLIERS.

## HOW TO WORK THEM.

**922.** Expired time will give earned premiums.

Unexpired time will give unearned premiums.

Working by unexpired time will prove work under expired time and *vice versa*.

## CANCELLATION OF YEARLY POLICIES.

**923.** Find the number of days expired or unexpired, as desired; opposite this number in the table will be found the appropriate "multiplier," which multiplied by the *annual* premium will give the premium sought.

## EXAMPLES.

1.—A yearly policy, premium \$20, is to be canceled after 200 days. What will be the earned premium?

*Solution:* Multiplier of 200 days is  $54.795 \times 20.00 = \$10.959$

*Proof:* Unexpired days 165, multiplier  $45.205 \times 20.00 = 9.041$

Total, 365 days equal 1 year or \$20.00.

**924.** 2.—Office A has a policy of \$5000, date January 1, premium \$75 annual. On January 26, subsequent, one half, \$2,500, is reinsured in Office B, to expire concurrently with the re-insured policy. What will be the *pro rata* proportion of the premium to be paid to Office B?

*Solution:*  $365 - 25 = 340$  days, multiplier  $93.151 \times 37.50 = \$34.93$

*Proof:* Expired 25 days, multiplier  $6.849 \times 37.50 = 2.57$

Total, 365 days equal 1 year, \$37.50

## LONG TERM INSURANCES.

**925.** Reduce all policies to annual terms, for which there are several processes.

1.—Find the number of days expired or unexpired: Divide these days by the number of years for which the policy was written; compute as an annual policy of that number of days, at the *term* premium.

## EXAMPLE.

A policy written November 21, 1884, for three years; term premium \$21.90, canceled *pro rata* June 1, 1887. What was the earned premium?

*Solution:* From November 21, 1884, to June 1, 1887, are 921 days

Then:  $921 \div 3 \text{ years} = 307 \text{ days}$ , multiplier  $84.110 \times 21.90 = \$18.42$ .

**926.** 2.—Or, divide the *term* premium by the number of days in the term; multiply the result by the expired days for earned premiums, or unexpired days for unearned premiums.

## EXAMPLE.

Taking the figures of the last above Example we have, premium,  $\$21.90 \div 1095 \text{ (days in 3 years)} = 2 \times 921 \text{ days} = \$18.42$ .

A policy for 5 years, from Nov. 27, 1880, term premium, \$36.50, canceled June 1, 1885. What was the earned premium?

*Solution:* By second method, and proof by the first: From November 27, 1880, to June 1, 1885, are 1645 days  $\div$  5 years = 329 days.

Multiplier 329 days,  $90.137 \times 36.50 = \$32.90$ .

*Proof:* Premium,  $\$36.50 \div 1825$  (days in 5 years) = 2.

Then 1645, days expired,  $\times 2 = \$32.90$ .

**927.** 3.—Another very simple method for treating long term insurances where more than a single year remains unexpired, is to estimate the expired days within the year by the customary annual process, and to the result obtained add the *yearly* premium—*i. e.*, the term premium divided by the number of years—for each unexpired twelvemonth of the original term.

#### EXAMPLE.

Take the same figures as above.

Then, 1825 days (5 years) less 1645 days expired, leaves 185 days unexpired.

Premium, 5 years,  $\$36.50 = \$7.30$  per annum, or  $\$29.20$  for four years.

Multiplier 185 days,  $50.685 \times 7.30 = 3.70$

Plus 4 years' premium - = 29.20

Total earned premium,  $\$32.90$

#### SHORT TERM INSURANCES.

##### WHEN ALIQUOT PORTIONS OF A YEAR.

**928.** Find the number of days expired; multiply these by the aliquot portion of the year for which the policy was written; compute result as an annual policy for that number of days at the full term premium.

#### EXAMPLE.

A policy written for 3 months, premium  $\$6.00$ , canceled with 60 days yet to run. What will be the unearned premium?

*Solution:* Three months are one-fourth of a year. Then  $60 \times 4 = 240$  days annual. Multiplier  $65.754 \times 6.00 = \$3.95$ .

*Proof:* Three months equal 91.25 days, less 60 days equal 31.25 days expired. Then  $31.25 \times 4 = 125$  days annual. Multiplier 125 days is  $34.247 \times 6.00 = \$2.05$  earned. Then  $\$2.05$  earned plus  $\$3.95$  unearned equal  $\$6.00$ .

#### COMPUTATION OF INTEREST.

(Bank and commercial interest is always computed at 360 days to the year.

Legal interest is computed at 365 days to the year.)

**929.** To find the interest upon any given sum, at any rate per cent., for any number of days, multiply the principal by the annual rate per cent.; then find the number of days to run, and the multiplier therefor, multiply the annual interest thereby; the result will be the amount sought.

#### EXAMPLE.

What will be the legal interest on  $\$1000$  at 7 per cent. annual, for 60 days, plus customary days of grace?

*Solution:* Multiplier for 63 days is  $17.260 \times 70.00 = \$12.08$ .

## ABANDONMENT OF THE POLICY.

**930.** The holder of a policy of life insurance refused to pay a premium note when due, and declared that "he would not have anything more to do with the insurers, and *abandoned* the whole thing;" but he retained the policy, and the company retained the note; nor did it appear that they consented to the abandonment. Held: "The policy remained in force."

McAllister v. N. E. Life Ins. Co., 101 Mass.; Sharpstein's Digest 33, § 1; United States F. & M. Ins. Co. v. Tardy, S. C. Ala., 2 Ins. Law Jour. 730; Amer. Ins. Co. v. Woodruff, S. C. Mich., 5 *id.* 668.

## RETURN PREMIUMS.

**931.** The general rules relative to return of premiums, upon policies that from any cause are not in force or binding upon the company, where the policy may be silent upon the subject are as follows:—

**932.** If the policy has not attached at all, the whole premium must be returned, if paid. But if the risk be entire and the policy has attached, even for an hour, where by any possibility the insurer could have been rendered liable for loss thereunder, there shall be no return of premium.

2 Philips Ins. 507, 524; Stevenson v. Snow, 2 Barr. 1437; Tyrie v. Fletcher, Cowp. 668; May Ins. 4, § 4.

**933.** Or, when the policy is void from fraud the underwriter retains the premium if paid. But where the policy is simply erroneous, its nullity entitles the insured to the return of any premium paid thereon; or if from any cause, fraud excepted, the risk has never begun, the premium may be recovered by the insured. (**585, 938.**)

N. Y. Life Ins. Co. v. Parent, 3 Q. L. R. 163; Park Ins. 215, 218; 2 Arnould Ins. 1210; Hopkins Marine Ins. 211; 10 Cush. Mass. 587.

**934.** So also, a premium note in a mutual company, given for a policy which has never taken effect on account of breach of warranty on the part of the insured, is void from want of consideration.

Frost v. Saratoga Mut. Ins. Co., 5 Denio N. Y. 154.

**935.** If a party voluntarily effects insurance for another, who could avail himself of it to recover for a loss, the premium cannot be recovered back should such other disclaim the transaction. (720, 1334.)

**936.** If a policy be void on account of *illegality*, or in cases of fraud, the insured is not entitled to a return of the premium if paid. (933.)

McFaul v. Mutual Ins. Co., 2 U. C. Q. B. 61-2.

**937.** It was held in former days, in the marine branch, that premiums were due and payable at the commencement of the risk, under all circumstances. The returning of premiums under exceptional circumstances being of more modern date. Stevens, in his excellent "Essays on Average" (A. D. 1813), Part iii., Art. 2, says: "The whole premium is considered as earned when the risk has commenced."

**938.** Another writer on the subject of premiums says: "The nature of the contract does not permit of the divisions of the premium. Hence it suffices that the risks may have been covered by the policy for any portion of the year; the whole premium is due if the risk is run but for a day, because on that day the risk might have burned, in which case the insured would not have claimed 1-365th of the amount of the insurance, but the whole of it. Hence the insurer is entitled to the whole of the premium." (933.)

#### RETURN COMMISSIONS BY AGENTS.

**939.** When a policy reported by the agent to the home office is not accepted, the premium not being earned, the company is entitled to a return of, or credit for, the commission charged thereon by the agent. But where the risk has been accepted by the company with a full understanding of it, in case of subsequent cancellation by the home office, the agent should be entitled to his commissions.

**940.** Exceptions to this rule will be found where risks accepted at the home office have been subsequently canceled by direction of a special agent after inspection; in such cases it

is customary to make the usual credit to the company of the commission upon the returned premium.

Agents are in all cases entitled to their commissions upon the earned premiums of their business.

#### DELIVERY OF THE POLICY.

**941.** The general principles governing the "delivery of the policy" are lucidly set forth by Judge Hare in the case of *Colier v. Ins. Co.*, Penn. Dist. Court, July, 1870. The learned Judge said :

"If the minds of the parties meet in an agreement for insurance, the policy will be valid without an actual delivery. A binding contract will not be allowed to fail, because the instrument which is the evidence of it is retained by the covenantor. His keeping will, under the circumstances, be regarded as that of the covenantee; but on the preliminary question,—is there such a contract?—it must always be a material inquiry, whether the party who is alleged to have bound himself did any act manifesting an intention to put the instrument beyond his control, and render it the property of the other party. If he did not, the obligation is *prima facie*, incomplete, and those who allege the contrary must make out their case by proof."

*Hopkins Mar. Ins.* 85; 1 *Duer Ins.* 111; *Perkins v. Wash. Ins. Co.*, 6 *Johns. Ch.*, N. Y. 485; 4 *Cow. N. Y.* 645; *McCulloch v. Eagle Ins. Co.*, 1 *Pick. Mass.* 177; *Thayer v. Middlesex Mut. F. I. Co.*, 10 *id.* 325; *Myers v. Liv. & Lon. Globe Ins. Co.*, S. J. C. *Mass.*, 6 *Ins. Law Jour.* 440.

**942.** Delivery of the policy may be *actual*, when delivered to the insured or his agent by the officers or agents of the company; or *constructive*, when the policy is made out and remains at the office of the company, subject to the order of the insured.

1 *Philips Ins.* 11, § 14; *Inbush v. Ins. Co.*, 4 *Ins. Law Jour.* 557; *Home Ins. Co. v. Curtis*, 5 *id.* 120; *May Ins.* § 60.

**943.** A policy may take effect on actual or constructive delivery; and may be retrospective where such is the intention of the parties, and neither party knows the prior circumstances. (868.)

See authorities last above cited.

**944.** When a policy has in fact been executed, and notice thereof has been given to the insured, if the contract is complete

and the premium has been paid, or its payment waived, its actual delivery is not essential to the validity of the contract. The policy is held by the company for the benefit of the insured, and ready, for actual delivery on demand. Should loss occur, and the policy be withheld after a completed contract, the insured would have his remedy in an action at law for the delivery of the policy. (941.)

1 Arnould Ins. 40, n. 1; 1 Phillips Ins. 22, 23; 4 Ins. Law Jour. 557; 5 *id.* 722, 736; May Ins. 69; Bragdon v. Appleton Mut. Ins. Co., 42 Me. 259; Xenos v. Wickham, L. R. 2 Ho. Lords 296.

**945.** Where the secretary of the company stated that "he had either sent the policy to the insured by mail or private hand," it was held "to be conclusive evidence against the company upon the question as to execution and delivery of the instrument."

Sussex Co. Mut. Ins. Co. v. Woodruff, 2 Dutch. N. J. 541.

#### ENTIRETY OF THE POLICY.

**946.** Where a policy was taken upon *shop, tools, fixtures*, and *stock-in-trade*, in specific sums on each, and one deposit note given for the whole, with an amount of cash as premium, and such policy was void on account of concealment of incumbrance upon the land upon which the shop was built, and another on the tools, it was held that the entire policy was void. (948, 950.)

Friesmuth v. Agawam Mut. F. I. Co., 10 Cush. Mass. Per Contra: Aetna Ins. Co. v. Resh, S. C. Mich. 1880, 9 Ins. Law Jour. 547.

**947.** The stipulation of the policy required that "the true title of the assured, and incumbrance thereon, should be expressed or the policy would be void." Held: "The failure to disclose a deed of trust on the house and lot, though avoiding the contract as to the house, would not avoid it as to the furniture named in the same policy, but separately appraised."

Lochner v. Home Mut. Ins. Co., 17 Mo. 247, affirmed 19 Mo. 628; Wilson v. Herkimer Mut. Ins. Co., 6 N.Y. 53; Merrill v. Agricultural Ins. Co., N.Y. C. A., 7 Ins. Law Jour. 531; Dale v. Gore Dist. Mut., 14 U. C. C. P. 548.

**948.** Where a policy covered house and furniture, each in a specific sum, and the policy was breached by an incumbrance upon the house, not noted. Held: "Such policy was void, not only as to the house but the furniture also." (**946.**)

*Haven v. Home Ins. Co.*, S. C. Ind. May, 1887; 3 Ins. Law Jour. 894, 935; 6 *id.* 595, 646; and authorities cited; 3 Benn. F. I. Cases 131; 6 Cush. Mass. 342.

**949.** Two houses were embraced in the same policy and insured for different sums; the policy provided that "if the insured premises should remain vacant for a certain time without notice to the company, the policy should become void." Held: "The fact that one of the buildings remained thus vacant without notice to the insurer would not invalidate the policy as to the other."

*Russ v. Mut. F. I. Co. of Clinton*, 29 U. C. Q. B. 73; *Commercial Ins. Co. v. Spankneble*, 52 Ill. 53.

**950.** As a general rule, when the consideration paid or to be paid is entire, the contract should be held to be entire, though the subject of it should be a separate and independent item; but when the price to be paid is applied to the separate and distinct items, the contract should be construed as separable.

2 Bar. & Adol. 882; 22 Pick. Mass. 457; 10 Johns. Ch. N. Y. 303; 9 Iowa 403; 6 Ins. Law Jour. 595, 740, 757; *Kuntz v. Niag. Dist. Mut. Ins. Co.*, 16 U. C. C. P. 573; *Gore Dist. Mut. Ins. Co. v. Same*, 2 S. C. R. 411.

## REFORM OF THE POLICY.

**951.** Chief-Justice PEMBERTON said:—

"Policies are sacred things, and a merchant (insurer) should no more be allowed to go from what he had subscribed in them than he that subscribes a bill of exchange."

*Skinner* 54; 1 *Arnould Ins.* 50, 51, 53n; 1 *Phillips Ins.* 71, § 116; 1 *Parsons Ins.* 150; *Kaines v. Knightly*, 2 Salk. 441; 1 *Duer Ins.* 73; *Baldassaroni* 135, 137.

**952.** To constitute a valid and complete contract of insurance, the "minds of the parties must meet" as to certain essential points, viz.: *the subject* (premises or property to be covered); *the amount* to be insured; *the premium* to be paid; and *the duration* of the risk. To leave either of these matters undetermined is to leave the contract incomplete. (**154.**)

*Cox v. Aetna Ins. Co.*, 29 Ind. 586; *Phoenix F. I. Co. v. Gurnee*, 1 Paige N. Y. 278; 12 *Wheaton* 259.

**953.** Errors or mistakes in fire policies are either of *fact* or of the *law*; *errors of fact* may be corrected by Courts of Equity; but, as a general rule, contracts will not be reformed in consequence of an *error of law*.

1 Philips 71, § 116, and the numerous authorities there cited; 18 Ohio 116.

**954.** If a *mistake* occur in framing the contract, to the correction of which neither the policy itself nor the application affords a clue, it cannot be corrected by a court of law, which will merely *construe*, but will not *reform* the contract; it can only act upon the agreement *as it is*; it cannot strike out the words employed and substitute others of a different import; nor change the language of the parties; such *mistakes* can only be corrected by the consent of the parties, or by a Court of Equity.

Greenleaf Ev. § 301; Loomis v. Jackson, 19 Johns. N. Y. 449; 2 Hill, Real Prop. 358; Am. Cent. Ins. Co. v. McLanathan, 11 Kans. 533; Liv. & Lon. & Globe Ins. Co. v. Wyld, 1 S. O. R. 604; 7 Ins. Law Jour. 732, § 164, 754; 8 *id.* 905; Van Tuyl v. Ins. Co., 55 N. Y. 657; Ward v. Schenectady Ins. Co., 7 Luns. N. Y. 452; Aetna Life v. Brodie, 5 S. C. R. 1; Rolland v. N. B. & Merc. Ins. Co., 11 L. O. J. 73; Casey v. Goldmit, 4 L. C. R. 107, 2 L. C. R. 300; 9 L. C. 61, 3 L. C. J. 67.

**954a.** An agreement, *oral* or *parol*, may explain an ambiguity or correct a mistake; but the policy must exhibit the ambiguity or the agreement must demonstrate the mistake. The court cannot supply an agreement that was never made, but which *one* of the parties *intended to make*. Nor, in the absence of fraud, can the court alter a policy as written if it be according to the understanding of *one* of the parties, although the *other* did not so understand it.

3 Benn. F. I. Cases 334; 17 La Ann. 228; 23 N. Y. 357; 1 Paige Ch. N. Y. 278; 3 B. Monroe Ky. 231; 8 Ins. Law Jour. 17, 134, 298, 322; 18 *id.* 373; Continental Ins. Co. v. Buchman, S. C. Ill., 18 Ins. Law Jour. 251.

**955.** When an agreement for a policy, and the policy as written, vary; or, where mistake has been made by the agent of the underwriter; or, in the filling up of the policy, a Court of Equity will compel the performance of the original contract and correct the mistake. But the proofs of such agreement must be conclusive; if any matter be left in doubt in the whole evidence, the bill will be dismissed.

When a Court of Equity is called upon to reform a written contract on the ground of mistake, such mistake must be proved in the most clear and unequivocal manner; the proof must be free from all reasonable doubt, if not quite incontrovertible, and clear, and overwhelming.

1 Philips Ins. 72, § 117, and authorities cited, also 73, n. 1; 4 Ins. Law Jour. 58, 214, 564; 3 Benn. F. I. Cases 334; 4 *id.* 209; Phoenix Ins. Co. v. Allen, S. C. Ind., Feb., 1887; Livingston v. West. Assur. Co., 14 Grant Chy. 461. Personal Identity: Travis v. Peabody Ins. Co., S. C. W. Va., 16 Ins. Law Jour. 161.

**956.** Judge Story says: "A court ought to be extremely cautious in the exercise of such an authority. It ought to withhold aid where the mistake is not made out by the clearest evidence, according to the understanding of both parties; and upon testimony entirely exact and satisfactory."

Story Eq. Jur. § 161; 3 Mason C. C. 6; 1 Arnould Ins. 51; 1 Philips Ins. 72; 1 Duer Ins. 134-8; 8 Ins. Law Jour. 299; 3 Seam. Ill. 439; 4 *id.* 18; 1 Gilman Ill. 605.

**957.** It has been held that to afford ground for reforming a policy on account of error in drafting, the mistake must appear to have been *mutual*; and both the agreement and the mistake must be shown by clear and conclusive evidence, that the contract, as expressed, is different, according to the understanding of *both parties at the time it was made*, from what it was intended to be.

So. Mut. Ins. Co. v. Yates, S. C. Ap. Va., 6 Ins. Law Jour. 625; 3 *id.* 407; 4 *id.* 214; 8 *id.* 293; 31 Conn. 517; Story Eq. Jur., §§ 134, 140, *et seq.*; 3 Watts Pa. 32, 37; 9 Mees & W. Ex. 54, 58; Wilson v. Queen Ins. Co., U. S. C. C., E. D., Pa.

#### ERRORS OF LAW.

**958.** Where the holder of a mechanic's lien was, by mistake of the agent of the company, described as a mortgagee, in the policy, and on trial the parties agreed that any evidence to correct any mistakes in the terms of the policy which could be given in a proper chancery proceeding might be introduced, it was held: "The policy and testimony, showing the mistake and facts averred, were competent and admissible in evidence, under the pleadings and stipulation."

12 Iowa R. 371; 1 Parsons Ins. 137; Upton v. Tribblecock, U. S. S. C., 5 Ins. Law Jour. 97; Rolland v. N. B. & Merc. Ins. Co., 11 L. C. J. 72; Casey v. Goldsmith, 2 L. C. R. 200; Somers v. Athenaeum Ins. Co., 3 L. C. J. 47.

**958a.** Proof of over-valuation is admissible as proof of mistake, when the question is as to reforming the policy.

Limitation clauses as to time of furnishing proofs, bringing suits, etc., are suspended during a suit for reform of the policy.

Woodbury Savings Bank v. Charter Oak Ins. Co., 31 Conn. 518.

#### OTHER AUTHORITIES.

Kerr, on Fraud & Mistakes 419, 420; Faber v. Mich. Mut. Life Ins. Co., 8 C. Mich., 1890, 4 Ins. Law Jour. 564; *id.* 214; Davega v. Crescent Mut. Life, S. C. La., 17 La. Ann. 228; 21 N. Y. R. 395; 9 How. U. S. 390; 5 Ins. Law Jour. 829, § 217-907. Not allowed on lapsed policies: 15 Ins. Law Jour. 66.

#### ALTERATION OF THE POLICY.

**959.** Alterations in the policy are commonly made by indorsements (**1106**) upon the instrument itself, or upon a slip or rider attached thereto; never upon a renewal receipt.

**959a.** Alterations duly inserted in the policy by the underwriter, without any new signature, will be valid if assented to by the insured, though merely verbally. But alterations without the assent of the insured will not affect the policy; it will still be valid as originally made.

Marsh. Ins. 245; 1 Philips Ins. 47, § 69; 1 Parsons Ins. 137-8; 1 Duer Ins. 78, 81; Emerigon Ins. 38, 39; 16 Metef. Mass. 439; 10 Barb. N. Y. 440.

**960.** An agreement *in writing*, signed by both parties, after the subscription of the policy, may declare what shall be the construction of a particular clause or word in the policy, although the construction so declared may be essentially different from that which must otherwise have been adopted, and will have the same effect as if it were inserted in the policy.

1 Arnould 53, 62, par. 3; 1 Duer Ins. 72; 1 Philips Ins. 70, § 113; 4 Term R. 320 & J. P. Moore 5; 4 Brown's Par. C. (by Tomlin), 488. Alteration by a clerk: Wash. Ins. Co. v. Davison, 30 Md. 91.

**961.** A material alteration of a policy *by the insured*, whether by erasure, interlineation or addition in a blank space, without the consent of the company, destroys the policy as to such company, though done without fraudulent purpose, but

with the intent to obtain such consent. An immaterial alteration, honestly made, will not annul the contract. (967.)

2 Vallin's Comm. 153; Fairlie v. Christie, 7 Taunt. 416, s. c. Holt N. P. 331; 1 Moore 117; Leghorn v. Oologan, 4 Taunt. 330; Campbell v. Christie, 2 Stark. 57; Laird v. Robertson, 4 Bro. P. C. 488; Foreshaw v. Chawbert, 3 B. & B. 158; 6 Moore 369; French v. Patten, 1 Camp. 72, 180b, s. c. 9 East, 351; 1 Philips Ins. 47, 69, 70, and authorities cited; 5 Mees & W. Ex. 469.

**962.** Striking a pen across words without obliterating them so as to make them illegible, and writing others in their stead, with consent of the company, is a cancelling of such words.

1 Philips Ins. 70, § 112; 7 Taunton 412.

**963.** Whatever may be the character or object of the alteration, it is necessary to be attested by the same evidence as the original contract—the signature of the insurer; and when such alteration is to the prejudice of the insured, or imposes upon him new obligations, his signature is also requisite, especially if contained in a separate instrument, as a “rider.”

1 Philips Ins. 70; 1 Arnould Ins. 53; Skinner 54; Stark. 336; 1 Duer Ins. 78.

**964.** Other underwriters may be substituted for the original insurers for any part or the whole of the amount insured, by indorsement duly executed by the substituted underwriter, with the verbal consent merely of the insured.

1 Philips 70, § 111; 2 Mass. 176.

**965.** When the policy is altered for the purpose of varying or enlarging the risk, the obligation to disclose all of the material facts then known exists in its full extent, as if for a new policy; and the effect of a concealment that renders void the altered portion is not to restore the original contract, but to annul the policy.

1 Bouv. Law Dicty., Title “Alteration,” 117.

**965a.** When a policy is altered to correct a mistake, the underwriter shall not afterwards object that he ought to have had an increase of premium.

Marsh. Ins. 247; 4 Ins. Law Jour. 83; Weskett Ins. 363.

**966.** When there has been manifestly an alteration of a parol instrument (without seal), the party claiming under it must explain the alteration. (Bouv. Law Dicty. *supra*.)

## SPOLIATION.

**967.** The alteration of a policy by a "stranger"—one who has no connection with the insurance—without consent or privity of the insured, is termed *spoliation*, and does not render the policy void; but all such spoliations are invalid, and will not void the instrument, even if material, if the original words can be restored with certainty.

2 Duer Ins. 245; 1 Phillips Ins. 71, § 115; 1 Greenleaf Ev. 596; 1 Parsons Contr. 224; 4 Taunt. 330.

## ADDITIONAL INSURANCE.

## OTHER INSURANCE—DOUBLE INSURANCE.

**968.** *Condition of the policy.*—"If the assured shall have, or shall hereafter make any other insurance on the property hereby insured, or any part thereof, without the consent of the company written hereon, then this policy shall be void."

**969.** This condition contemplates that consent to *future* insurance shall be given in *advance*, for the policy becomes void if there is any *subsequent* insurance without consent.

A *subsequent* written consent for other insurance is not, on its face, a consent to *past* insurance, but imports rather a *future insurance*."

Security Ins. v. Fay, 1 Ins. Law Jour. 168; Sutherland v. Ins. Co., S. C. A. Va.; 8 *id.* 182; Continental Ins. Co. v. Heilman & Cox, S. C. Ill., 9 *id.* 92; Baker v. Ins. Co., 12 Gray Mass. 265;

In the earlier forms of policies the conditions required that all *prior* insurance must be noted at the time of taking the policy; and all *subsequent* insurance was to be noted with "all reasonable diligence," and endorsed upon the policy.

Kimball v. Ins. Co., 8 Gray Mass., 4 Benn. F. I. Cases 178; 1 *id.* 586; Home Ins. Co. v. Gwathmey, S. C. Va.; 12 Wend. N. Y. 507, affirmed 16 *id.* 385.

**970.** The object of this stipulation is to provide against *over-insurance*, for, considered in any other light, it militates against the interest of the underwriter, as is very pertinently put by MR. HINE. He says:—

“In American practice the first underwriter, *while he stands alone*, is under that rule. He pays *ALL* the loss; he is in the undisturbed possession of *all* his rights. But, if ‘*other insurance*’ be taken, whether large or small, general or special, its only effect upon him is to share his loss and diminish his liability; and to just that extent it is to him a favor and a benefit, instead of a hurt or detriment. The only *right* he is thereby deprived of is the right to lose more money than he otherwise would.”

2 Benn. F. I. Cases 112, 134; Penn. F. I. Co. v. Kittle, 8 Ins. Law Jour. 326, & 68; Graves v. Ins. Co., 43 Wis.

The generally recognized *principles* applicable to *additional insurance*, under the above-cited conditions, are embraced in the following points:

#### PERMITS.

**971.** The privilege of “*other insurance without notice till requested*” admits of any amount of *additional insurance*, either prior or subsequent, without question, notwithstanding the printed condition of the policy to the contrary.

12 Wend. N. Y. 507; Tyler v. Aetna Ins. Co., 16 *id.* 385; Flanders Ins., 1st Ed., 45.

**971a.** The privilege of “*other insurance to the amount of ten thousand dollars,*” or “*total insurance to the amount of ten thousand dollars, including this policy,*” limits the further insurance to the sum named. Any other insurance beyond the limit specified, without further specific consent of the first insurers, voids the policy under the stipulation requiring “*notice and consent,*” absolutely and at once. (**973.**)

**972.** HELD: That the indorsement “*leave given to keep insured to an amount not exceeding three-fourths of the estimated cash value of the property*” written in the policy when issued, included “*prior*” as well as “*subsequent*” insurances; and was a substantial compliance with the by-law requiring *notice of “prior insurance.”* (**969,** distinguished.)

Angell Ins. 144; Flanders Ins. 51 n; 4 Howe U.S. 185; 12 Gray Mass. 265; 3 Benn. F. I. Cases 114; 19 N. H. 580; Oscar v. Provincial Ins. Co., 19 U. C. Q. B. 267; 12 U. C. C. P. 133; Winnaugh v. Provincial Ins. Co., 20 U. C. C. P. 405.

## NOTICE OF OTHER INSURANCE.

**973.** Where the condition of the policy required that "if other insurance is effected on the same property, the insured should *give notice* thereof, and cause the same to be indorsed on the policy, or the policy would be void." (1010.)

HELD: "The insured must prove that he gave such *notice* of subsequent policies, or he could not recover. *Notice* of an 'intention' to procure subsequent insurance would not be a compliance with the condition. And further: The condition requiring indorsement upon the policy of subsequent insurance was a condition-precendent, and *verbal notice* was not compliance with it." (981.)

2 Benn. F. I. Cases 134; 4 *id.* 269; 1 *id.* 426; 4 Ins. Law Jour. 244; 9 Cush. Mass. 470; 8 Gray Mass. 38; 38 Pa. Sta. 250; 48 *id.* 368; 38 Mo. 85; 2 Watts & S. Pa. 508; 15 Ins. Law Jour. 503; Dickson v. Provincial Ins. Co., 25 U. C. C. P. 157; N. Y. Cent. Ins. Co. v. Watson, 23 Mich. 486, and cases cited; Allemania F. I. Co. v. Hurd, S. C. Mich.; Jacobs v. Equitable Ins. Co., 18 U. C. Q. B. 14, s. c., 17 *id.* 35, s. c. 18 *id.* 373, s. c. 19 *id.* 257; Parsons v. Standard Ins. Co., V. S. C. R. 233; Beausoleil v. Canada Mut. F. I. Co., 1 L. N. 11; Durbin v. Hochelaga Mut. Ins. Co., S. C. Montreal, Apl. 81; C. E. & App. Ont., 1 L. N. 14; Saville v. Aetna Ins. Co., S. C., Montreal, Feb. 2, 1889; Merritt v. Niagara Dist. Ins. Co., 18 U. C. Q. B. 529; Dafoe v. Johnstown Dist. Ins. Co., 7 U. C. C. P. 55; Hatton v. Beacon Ins. Co., 16 U. C. Q. B. 316; Barton v. Gore Dist. Mut. Ins. Co., 14 U. C. Q. B. 342. By mail: Shannon v. Hastings M. F. I. Co., 26 U. C. C. P. 380.

**974.** Where the condition of the policy required that "*notice* of other insurance must be given and indorsed on the policy, or otherwise acknowledged and approved in writing, or else the policy shall be void," the insured made a second insurance and notified the company of the same; to which the secretary replied, "I have received your notice of additional insurance."

HELD: That this was an "acknowledgment and approval in writing" within the meaning of the condition; and that, after receipt of the *notice* the policy continued in full force until the company made their election to terminate the policy, and made such determination known to the insured.

Potter v. Ont. Mut. Ins. Co., 5 Hill N. Y. 147; Angell Ins. 143; 1 Parsons Ins. 119, n. 3.

**975.** Where the condition of the policy was "that prior insurance, unless expressed in the policy, should avoid it," and a prior insurance was not thus expressed, though claimed to be known and assented to by the company.

**HELD :** That the policy was void, and that parol evidence was not admissible to show that the prior insurance was known to and assented to by the company; and that the policy was received by the insured supposing that it contained a recital thereof. (981.)

*Carpenter v. Wash. Ins. Co.*, 16 Peters, S. C. U. S. 495; 2 Benn. F. I. Cases 129; *Couch v. Ins. Co.*, S. C. E., Conn., 1 Ins. Law Jour. 136.

#### ADDITIONAL INSURANCE.

**976.** A recitation of "prior" insurance, in the body or on the margin of a policy, is a compliance with the condition requiring such insurance "to be noted on the application or indorsed on the policy, or otherwise approved in *writing* by the secretary."

*Stacey v. Ins. Co.*, 2 Benn. F. I. Cases 108; 3 *id.* 115; 3 Ins. Law Jour. 191; *Ins. Co. v. Gallatin*, S. C. Wis., 9 *id.* 50; 14 N. Y. R. 258.

**977.** When, at the time of the insurance, the insured gave written notice of *prior* existing insurance, which the company failed to indorse on the policy:—

**HELD :** That the company was estopped from setting up such prior insurance as a defense to an action on said policy.

**HELD :** That a recital of "prior insurance" in an application is *notice* to the company of such insurance; but a recital of a *wish to obtain subsequent insurance* was *not notice* of such insurance, when obtained.

**HELD :** That it was the duty of the company, upon being notified by its own agents of the additional insurance (notified to such agent) to indorse the same upon the policy of the insured, or *notify* him of their refusal to do so; and, having failed to do so, they were estopped from setting up as a defense the failure to have such *additional insurance* indorsed upon the policy.

*N. O. Ins. v. Co. Griffin*, S. C. Texas, 15 Ins. Law Jour. 503; 13 West. Ins. Rev. 480.

**978.** When the charter provides "that the consent of the president *in writing*, etc.," shall be necessary to the validity of the policy in case of any subsequent insurance, and the insured *notified* the president and secretary of a second insurance, and they *verbally* consented to the same, the failure to obtain the *written consent* of the president was fatal to the policy.

16 Peters U. S. 495; 12 Cush. Mass. 469; 51 Pa. Sta. 402; 18 Iowa 426; *Bilington v. Provincial F. I. Co.*, 2 S. C. R. 182.

## WAIVER OF THE CLAUSE.

**979.** "In a mutual company, as a general rule, no agent or officer of the company has authority to waive its by-laws. An agent cannot accept notice of other insurance, or waive its consequences."

19 Ohio R. 149; 4 Zab. N.J. 447. Per Contra: 22 Conn. 75. Notice of after the fire: Atwell v. West Assr. Co., 1 L. C. J. 279; Supras v. Mut. F. I. Co. of Ohambly & Huntingdon, 1 L. C. 197; Pr. Council 17 R. L. 47, 13 L. C. J. 39, 1 L. C. J. 279; Ramsay W. C. M. Co. v. Mut. F. I. Co., 11 U. C. Q. B. 516. Notice after fire, under short policy, sufficient: Lafleur v. Ins. Co., 22 L. C. J. 247; Emma Kittle v. Penna. F. I. Co., S. C. Pa.; Finshbeck v. Phenix Ins. Co., 54 Cal. 422; Philbrook v. N. E. Mut. Ins. Co., 37 Me. 137.

**980.** The stipulation that "persons insuring property must give notice of any other insurance on the same, and cause such other insurance to be indorsed on the policy," applies to subsequent as well as prior insurance. (**969.**)

Stacey v. Franklin F. I. Co., 2 Benn. F. I. Cases 108, 2 Watts & S. Pa. 506.

**981.** *Parol notice* is not a compliance, at law, with the condition of the policy requiring other insurance to be *indorsed* in writing on the policy. (**978.**)

HELD: That, in the absence of any stipulation in the policy requiring notice of other insurance to be in writing, and no questions in the application concerning it, *parol notice* was sufficient.

HELD: That *parol notice* to an agent, who was only authorized to receive and forward applications, solicit insurances, and receive premium notes and cash percentages, and while actually engaged in preparing an application for the policy in question was within the scope of his authority and binding on the company, though it never reached them.

16 Peters U. S. 495; 12 Cush. Mass. 439; 7 *id.* 175; 17 N. Y. R. 609. By Broker; 15 Ins. Law Jour. 448; Per Contra: 5 Foster N. H. 169; 5 Hill N. Y. 901; Barb. 191.

**982.** Mere knowledge of "other insurance" upon the part of an agent of the company or a broker is of no avail to the insured if not indorsed upon the policy, which contains a condition requiring such *indorsements*. Indorsement of consent upon the register of the office is indorsement upon the policy. Such knowledge is not a waiver of notice and indorsement of such insurance.

9 Cush. Mass. 470; 17 N. Y. R. 609; 22 *id.* 402; 55 Mo. 585; 1 Dill. C. G. R. 443; 6 Bush. Ky. 164; 8 *id.* 133.

**983.** A declaration of a *prior insurance*, made after the loss in compliance with the stipulation that the insured shall state what other, if any, insurance has been made on the same property, will be too late.

22 N. Y. 402. Per Contra: 1 L. C. J. 197, 278; 22 L. C. J. 247; 11 U. C. Q. B. 516; Priv. Council, 7 R. L. 47; 13 L. C. J. 36, cited (969).

**984.** Where an agent for two companies issues a policy in each company to the same party, and fails to make a notice of "other insurance" on one or both of the policies, the policies are valid, as the companies must be taken to be aware of all of the facts in the case *since the previous policies were in their own companies.* (977.)

Flanders Ins., 1st Ed., 42; Rowley v. Aetna Ins. Co., 40 N. Y. R. 557.

**985.** Where the stipulation of the policy requires notice of any "other insurance" *made on their behalf on the same property.*

HELD: "To be limited to insurance effected by direction or within the knowledge of the insured, and not by a third party without his knowledge or recognition. As where a commission merchant or warehouseman covers goods by "the usual commission clause," and some of the goods may be covered by the owner under a *float*: HELD: Not to be within the clause, and that the owner or commission merchant might jointly or cumulatively recover the single and full value of the goods."

43 Pa. Sta. 350; 7 Rob. La. 351; 2 B. Monroe 47; Hough v. People's F. I. Co., 36 Md. 398; Roumage v. Ins. Co., S. C. N. J., 1 Green 110; 1 Benn. F. I. Cases 389. Per Contra: Home v. Balt. Wareho. Co., U. S. S. C., Oct., 1876.

**986.** Other insurance, not consented to by the company, but acknowledged in the proof of loss in a company of bad repute, not authorized by the Federal government, is not an infraction of the condition as to other insurance. (13 Q. L. R. 295.)

**986a.** Double insurance by *mistake.* See case of Guathier v. Waterloo Mut. Ins. Co., C. App., Ont., Mar. 26, 1880, 44 U. C. R. 490, and authorities cited.

#### DOUBLE INSURANCE.

**987.** Double insurance is additional, and valid insurance prior or subsequent, upon the same subject, risk and interest effected by the same insured, or for his benefit and with his

knowledge and consent, in which case the policies are considered as one and the same, the underwriters being liable *pro rata*, and entitled to contribution to equalize payments made on account of losses.

Marsh. Ins. 121; Park Ins. 280, 282; Hopkins Marine Ins. 264; Annesly Ins. 291; Angell Ins. 22; Flanders Ins. 36, § 6; Mason v. Andes Ins. Co., 23 U. C. C. P. 37; Gilchrist v. Gore Dist. Mut. Ins. Co., 34 U. C. Q. B. 15; May Ins. 438-445; Civil Code L. C., §§ 2516-19.

**988.** Lord MANSFIELD, more than a century ago, HELD:—

“When a man makes a *double insurance of the same thing*, in such a manner that he can clearly recover against several insurers, on distinct policies, the law says he must be content with a single satisfaction.” (Park Ins. 279 *et seq.*)

**989.** “*Double insurance* is another name for *over-insurance*, but is more applicable to ‘*duplicate*’ insurance to the whole amount of the interest, which does not exhaust the insurable interest of the insured, unless the policy contains a clause prohibiting other insurance; nor even then, for he can, notwithstanding, make *double insurance in simultaneous policies*; which is, in effect, a mere insurance of the solvency of the underwriter by the policies of the others; for he can recover but one indemnity from all; and if he compel full indemnity from some of the underwriters, they may come upon the others for a *pro rata* contribution to equalize the payments.” (1982 *et seq.*)

1 Phillips Ins. 187 *et seq.* and authorities cited; Simultaneous Insurance: 1 Magens’ Ins. 13, n. 3; 2 *id.* 34, Ord. of Spain; Ord. Genoa 85; Washington Ins. Co. v. Davison, 30 Md. 91; Manhattan Ins. Co. v. Stein & Zang, 5 Bush Ky. 652. The Contribution clause effectually does away with Simultaneous policies.

**990.** In France double insurance is not permitted, (Code de Commerce, § 359), and Emerigon (p. 23) thus refers to the law and its operation:—

“Since it is allowed to have insurance only upon what is put at risk, it follows that it is prohibited to cause to be insured by a second insurer what has already been insured by the first. It is plain, however, that this prohibition does not extend to a plurality of policies, when their amount does not exceed the value of the subject insured. An insurance is not the less one for being contained in different writings. It is not multiplying insurance to have the risk which one has taken re-insured, or to have insured the solvency of one’s own insurers.” (1019.)

## NON-CONTRIBUTIVE CO-INSURERS.

**991.** Other insurance is not always "double" insurance. An insured may take policies upon different parts of the same building; or of the merchandise within the building; or upon different interests in both, without effecting *double insurance*.

Insurance by different parties of distinct interests in the same subject, as mortgagor or mortgagee, owner, reversioner, lessor and lessee, vendor and vendee, etc., is not *double insurance*. (**668, 991.**)

**992.** Where a policy in one company covered a *building* only, and a subsequent policy of another company covered the *building, machinery, tools, belting and stock* for the same owner; it was held *not* to be *double insurance* within the meaning of a clause in the first policy prohibiting *double insurance* without notice to the insurer. (Not sustained by subsequent rulings.) (**993.**)

*Sloat v. Royal Ins. Co.*, 49 Pa. Sta. 14; *Harris v. Ohio Ins. Co.*, 5 Hammond O. 466, over-ruled 5 Ohio 467; 5 Hill N. Y. 298, over-ruled 50 N. Y. 389.

**993.** But on the other hand, in a case where a policy covered *goods* in one company, and a subsequent policy in another company covered *store and goods* for the same owner, the first company claimed their policy to be void by reason of the second insurance "*not notified and indorsed thereon*." It was:—

HELD: "To constitute *double insurance* the same risk must be covered by the second policy, for the benefit of the same person, and is, to any extent, double insurance, and the goods being protected by the second policy from the perils of fire made it *double insurance*, and breached the policy."

"It does not appear that if a subject insured in the policy is then insured again to an amount in the aggregate exceeding its value, it is less a *double insurance* because divers other subjects are insured in either or both of the policies"

1 *Philips Ins.* 189, § 366; *Ramsay W. C. M. Co. v. Mut. F. I. Co.*, 11 U. C. Q. B. 518; *Harris v. Ohio Ins. Co.*, 5 Ohio 467; *Cromie v. Ky. Ins. Co.*, 15 B. Monroe Ky. 432; *Stacey v. Franklin Ins. Co.*, 2 Watts & S. Pa. 506; 1 Benn. F. I. Cases 586; 2 *id.* 72; 4 *Ins. Law Jour.* 975; *Flanders Ins.* 38 *et seq.*

## UNDER MORTGAGE INTERESTS.

**994.** The interest of a *mortgageor* is so entirely distinct from that of a *mortgagee* that the simultaneous existence of two policies on the same property, one by the former, the other by the latter, does not create *double insurance*. (731.)

*Fox v. Phoenix F. I. Co.*, 52 Me. 332; *Ætna Ins. Co. v. Tyler*, 12 Wend. 507, s. c. 16 *id.* 385; *Mut. Safety Ins. Co. v. Hone*, 2 Comst. 238; *Flanders Ins.* 356; 2 Benn. F. I. Cases 72; 4 *id.* 789; *Franklin Ins. Co. v. Drake*, 2 B. Monroe Ky. 47.

**994a.** Insurance by a *mortgagee* of his interest is not within the clause of a "prior insurance;" but if such insurance be made for the benefit, and at the expense of the *mortgageor*, it is within such clause, and would avoid a *prior* policy.

*Holbrook v. Am. Ins. Co.*, 1 Curtis C. C. 193; *Carpenter v. Prov. Wash. Ins. Co.*, 16 Peters U. S. 495.

A policy assigned to a *mortgagee* as a collateral security is within the provision in a subsequent policy requiring notice of prior insurance.

*Blais v. Stanstead & Sherb. Mut. M. S. C.* 1887; M. L. R. 25, C. 117; 14 R. L. 136. Second mortgage: *Livingston v. West. Ass. Co.*, 14 Grant Ch. 461; *Barton v. Gore Dist. Ins. Co.*, 14 U. C. Q. B. 342; s. c. 12 Grant Ch. 166; 1 Benn. F. I. Cases 690; 2 *id.* 120; 10 Ins. Law Jour. 354; *Norwich F. I. Co. v. Boomer*, 52 Ill. 442.

**995.** A policy is not avoided under conditions requiring notice of subsequent insurance, because a second policy has been taken without notice, in the name of a *mortgagee* of first insured; for if the second policy was for the exclusive benefit of the *mortgagee*, it was not within the condition; and if taken for the benefit of the *mortgageor* (and this should be deemed within the condition), then the second policy was void, under a condition in itself, requiring notice of prior insurance.

*Jackson v. Mass. Mut. F. I. Co.*, 23 Pick. Mass. 418; *Fox v. Phoenix Ins. Co.*, 52 Me. 333.

## UNDER RE-INSURANCE.

**996.** The clause as to *double insurance* or *over-insurance* is inoperative in a policy of *re-insurance*, unless those insured made other *re-insurances*. (1043.)

A clause in a policy, providing that "in case there is other insurance, prior or subsequent, on the property insured, the *re-*

*insured* shall be entitled to recover, in event of loss, only a proportionate part thereof," is held to refer entirely to *re-insurance* on the same interests; and if there be no other *re-insurances*, the re-insurer is liable for the amount of the policy.

Mut. Safety Ins. Co. v. Hone, 2 Comst. N. Y. 235; 2 Benn. F. I. Cases 590, 593.

## VOID AND VOIDABLE POLICIES.

### VOID POLICIES.

**997.** The procurement of a *void* policy is not a breach of the condition against further insurance without notice, so as to avoid a previously existing policy. (1009.)

HELD: The *first* policy having been avoided by subsequent insurance without notice, the *second* policy was liable for the whole loss, notwithstanding its stipulation that "in case of other insurance they would be liable only for their *pro rata* proportion."

Where a *first* policy was *void* from "increase of risk," or other cause, and a *second* policy was subsequently taken without notice of "prior insurance."

HELD: "The *first* policy being at an end, and of no effect, *did not avoid* the *second* policy."

HELD: "That a *second* insurance, which is *void* on account of misrepresentation, is not an insurance within the stipulation as to notice and consent."

Philbrook v. N. E. Mut. Ins. Co., 37 Me. 137; Gale v. Belknap Ins. Co., 41 N. H. 179; Gee v. Cheshire Mut. Ins. Co., 55 N. H. 65; Kimball v. Howard Ins. Co., 8 Gray Mass. 33; Bigler v. N. Y. Central Ins. Co., 22 N. Y. 402, s. c. 20 Barb. 635; Lackey v. Georgia Home Ins. Co., 42 Ga. 456; Hygum v. Aetna Ins. Co., 11 Iowa 21; David v. Hartford Ins. Co., 13 Iowa 69; Hand v. Williamsburg F. I. Co., 57 N. Y. 41; Jackson v. Farmers Mut. Ins. Co., 5 Gray Mass. 52; Hardy v. Union Mut. F. I. Co., 4 Allen Mass. 217; Schenck v. Mercer F. I. Co., 24 N. J. (4 Zab.) 447; 2 Ins. Law Jour. 113; 3 *id.* 525; 8 *id.* 181; 10 *id.* 354; 3 Benn. F. I. Cases 131.

**998.** If the insured cannot at any time recover upon a *second* policy, containing the condition against other insurance without notice and consent, the first policy is not thereby made *void*. (Authorities *supra*.)

A *second* insurance, which is *void*, does not avoid a *first* policy containing stipulations against subsequent insurance

without notice and consent, even though the insurers who made such *void* policy compromise and pay the loss.

*Bigler v. N. Y. Central Ins. Co.*, 22 N. Y. 402; 33 Pa. Sta. 397, and authorities *supra*; *Flanders Ins.*, 1st Ed., 50, n. 2, authorities cited; *Gale v. Ins. Co.*, 41 N. H. 170; *Sunderland v. Old Dominion Ins. Co.*, S. C. Va., 8 Ins. Law Jour. 181, and authorities there cited; *Wilson v. Queen Ins. Co.*, U. S. C. C. Pa., 10 Ins. Law Jour. 137. *Per Contra*: *Carpenter v. Providence Ins. Co.*, 16 Peters U. S. 495; 22 N. Y. 402, *supra*; 5 R. I. 38.

**999.** Where a *prior insurance* is represented to a subsequent insurer to be on the same property, when in fact it does not embrace *all the property* covered by the second policy; or where the first policy is in specific amounts, whilst the second is general, the policy is *not avoided*, because the insured is not bound to give any details unless inquired of, or required to do so by the by-laws or conditions of the contract.

*Benedict v. Ocean Ins. Co.*, 31 N. Y. R. 339, s. c. 1 Daly N. Y. 8.

**1000.** Where the question raised was whether an excess of insurance, which existed during the currency of the policy sued on, but which had ceased to exist before the loss occurred, would *avoid the policy*, it was held that the contract was *void* from the date of the over-insurance.

*Bigler v. N. Y. Central Ins. Co.*, 22 N. Y. 402.

**1001.** On the other hand, in a case in Illinois, under a policy which stipulated that "if the insured should have existing, during the continuance of the policy, any other insurance not consented to by the company in writing and mentioned in or indorsed upon the policy, then the insurance should be *void*"; there existed during a portion of the term embraced in that policy "other insurance" not consented to in any way.

HELD: If such other insurance had ceased to exist, at the time of the loss under that policy, the right of the insured to recover would not be affected thereby.

*N. E. Mut. F. I. Co. v. Schettler*, 38 Ill. 166; 2 Benn. F. I. Cases 83, n. 109; *Forbes v. Agawam Ins. Co.*, 9 Cush. Mass. 470; *Clark v. N. E. Mut. Ins. Co.*, 6 Cush. Mass. 342; *Gale v. Ins. Co.*, 41 N. H. 170; *Flanders Ins.* 51, n.; 9 Ins. Law Jour. 212, and authorities cited; *Gee v. Ins. Co.*, 56 N. H. 64, 14. Ins. Law Jour. 489.

#### VOIDABLE POLICIES.

**1002.** "Stipulations as to prior or subsequent insurance are designed to apply to all cases of policies then existing in point

of fact, whether they be *void* or *voidable*," (Justice STORY.) Hence, as a policy obtained by misrepresentation of cost and value of premises is *voidable* only and not *void*, so, under the condition requiring notice and consent to prior or other insurance, the second underwriter is entitled to notice of such other insurance.

Hibbard v. Hartford F. I. Co., 33 Iowa 325; McLachlan v. Aetna Ins. Co., 4 Allen N. B. 173; Baer v. Phoenix Ins. Co., 4 Bush. Ky. 242; May Ins. 438; Wood Ins. 586; Campbell v. Aetna Ins. Co., S. C. N. S. 1860; Ramsay W. C. M. Co. v. Mut. F. I. Co., 11 U. C. Q. B. 516; Carpenter v. Prov. Wash. Ins. Co., 16 Peters U. S. 496; Firemen's Ins. Co. v. Holt, Receiver, 2 Ins. Law Jour. 1880, 212; Continental Ins. Co. v. Hellman and Cox, S. C. Ill. 82 Ill. 145; 9 Ins. Law Jour. 91; Gee v. Cheshire Co. Mut. Ins. Co., 56 N. H. 65; Allison v. Phoenix Ins. Co., N. Y., U. S. C. C., 4 Ins. Law Jour. 148.

**1003.** Where a policy contained a stipulation that it should be *void* if other insurance should not be endorsed on it. **Held:** The existence of prior insurance did not make it *absolutely void*, but invalid and *voidable*, though capable of being confirmed and made valid by acts of the insurers showing a waiver of the defect. (Authorities *supra*.)

**1004.** A company receiving notice of "additional insurance," and failing to *void* the policy in consequence, cannot resist recovery in case of loss on that ground; such waiver of rights in regard to additional insurance, however, will not debar the company from the benefit of a *pro rata* contribution with the additional policies in case of loss. (2. C. 199 Pa.)

**Held:** That when a policy for "other insurance" was apparently valid on its face, and could only be shown to be *void* by preceding matters in avoidance, it was to be deemed only *voidable*. The pleading of such matters in avoidance appertained solely to the company issuing the policy; the plaintiff is not entitled to set up such matters.

Hibbard v. Hartford Ins. Co., 33 Iowa 325; 1 Ins. Law Jour. 178; Jackson v. Mass. Mut. Ins. Co., 23 Pick. 418; Knight v. Eureka Ins. Co., 6 Ins. Law Jour. 69; 8 Phila. 32.

**1005.** Where other policies, which are alleged to create the *over-insurance*, are *void* at the time of the loss, they are no obstacle to recovery on the policy on which the claim is made; but, if *voidable* only, for some breach of condition for which the insurer *might avoid* them, but which right they had waived, the *over-insurance* still exists. (**1002.**)

Tyler v. *Ætna Ins. Co.* 12 Wend N. Y. 385; *Flanders Ins. 49*; *Fireman's Ins. Co. v. Holt*, 9 Ins. Law Jour. 212; 51 Pa. Sta. 402.

**1006.** A policy which has become *voidable* may be assigned. If the insurer, with the knowledge of that fact, consents to the assignment, he waives the right to avoid and must stand by the policy. (Authorities *supra*.)

**1007.** Stipulations declaring policies *void* in certain cases have been generally held or construed as rendering them not absolutely *void*, but *voidable* at the option of the underwriter. And such right of avoidance was subject to waiver, either by express agreement or by the acts of the parties.

*David v. Hartford Ins. Co.*, 13 Iowa 69; *Mitchell v. Wycoming Ins. Co.*, 51 Pa. Sta. 403.

**1008.** When a policy is neither *void* nor *voidable upon its face*, but merely *voidable* by the underwriter upon due proof of the facts (prior insurance not noted), and the amount of which had been paid upon the happening of a loss, it was held to constitute such "*additional insurance*," although it might have been avoided by the company issuing it, by extrinsic evidence. **(1002.)**

*Dafoe v. Johnstown Dist. Mut. Ins. Co.*, 7 U. C. C. P. 55; *Lackey v. Georgia Home Ins. Co.*, 42 Ga. 456.

**1009.** When the condition of the policy stipulated: "If the insured shall have, or shall hereafter make any other insurance upon the property hereby insured, or any part thereof, *whether valid or otherwise*, without the consent of the company written hereon, this policy shall be void," all such policies, whether *void* or *voidable only*, will be "other insurance without notice," and will invalidate the policy containing the stipulation. **(1002-3.)**

*Continental Ins. Co. v. Heilman & Cox*, 9 Ins. Law Jour. 91, § 166. Per Contra: *Allen v. Merchants Ins. Co.*, S. C. La. 1880.

#### REASONABLE DILIGENCE IN GIVING NOTICE.

**1010.** When facts are not in dispute, the court should determine, as a question of law, what is *reasonable diligence*, in giving notice of a subsequent insurance to the first insurers.

Held: Also, that a notice *seven months* after the date of the second policy, and subsequently to the destruction of the property by fire, would not

be compliance with the condition of the policy. Nor would notice of an "intention" to make such additional insurance, given to the company or its agent, be a compliance with the condition requiring actual notice of subsequent insurance. (1040.)

4 Ins. Law Jour. 244, 661; 5 *id.* 529, 739, 803, 805; 6 *id.* 707, 724, § 60, 730; 2 Benn. F. I. Cases 417, 659, 680; 4 *id.* 269.

#### RENEWAL OF DOUBLE INSURANCE.

**1011.** The *renewal* of a prior insurance, mentioned in the application for a subsequent policy, is not within the terms or spirit of a provision in the subsequent policy, requiring notice in case of making other insurance.

The insured held a policy for *five* years, signed by the president and secretary (according to the by-law of the company), which recited on its face that \$2,500 was insured "in a company in Concord."

HELD: That the contract must be considered to be an insurance for five years, with a *double insurance* to the amount of \$2,500, to subsist during the whole term; and at the expiration of the Concord policy, the insurer was at liberty to *renew* it, or take a policy for the same amount in any other company without giving any further notice to the company.

First Bap. Soc. v. Hillsboro Ins. Co., 19 N. H. 580; Brown v. Cattaraugus Ins. Co., 18 N. Y. 385; Parsons v. Standard Ins. Co., V. S. C. R. 233; Dietz v. Mound City Ins. Co., 38 Mo. 85; 3 Benn. F. I. Cases 104; 2 *id.* 293.

**1012.** Where a *second* policy had endorsed upon its face, as well as in the application, "\$2,000 on same property in the People's Mutual."

HELD: That this statement was not a continuing *warranty*, and was satisfied by the existence of such insurance at the time of issuing such second policy, though it might afterwards have expired, been canceled, or avoided by acts of the insured.

Forbush v. Western Mut. Ins. Co., 4 Gray 337; 3 Benn. F. I. Cases 114; 2 Ins. Law Jour. 621; 14 Gray Mass. 459.

To make other *continuous insurance* obligatory upon the insured, such agreement must appear in the policy. The following is the customary form:—

"The insured to keep other insurance (concurrent herewith) to the amount of \_\_\_\_\_ dollars, or be held as co-insurer for any deficiency in such amount at the time of any loss."

1 Benn. F. I. Cases 532; Liscom v. Boston Mut. F. Ins. Co., 9 Metc. Mass. 205; McMahon v. Portsmouth M. & F. Ins. Co., 2 Foster N. H. 15.

## LIMITED AMOUNTS.

**1013.** Where an insurance by-law provides that "the aggregate amount insured in this and other companies, on the above-mentioned property, shall not exceed *two-thirds* of the estimated cash value, any further insurance above the *two-thirds* value would render the policy void."

*Haley v. Dorchester Ins. Co.*, 12 Gray Mass. 545; *Atwood v. Ins. Co.*, 28 N. H. 234; *Elliott v. Lycoming Ins. Co.*, 66 Penn. Sta. 22; *Mitchell v. same*, 51 Penn. Sta. 402.

**1014.** A condition which simply provides that the policy shall become void "if any other insurance be made, which, together with this, shall exceed a given amount," relates only to subsequent insurance.

**1015.** Where the "two-thirds estimated value" of the property at risk was fixed in the policy at \$1,950, and subsequent improvements were made increasing such value, and additional insurance taken thereon, but no change was made in the "estimated value" as fixed by the policy; the insured claimed for two-thirds of the "actual" value at the time of loss. The court held: The value being fixed in the policy, both parties must agree to any change in this amount; there is no authority at law or in equity to reform the contract, by substituting "actual" for "estimated." Insured should have had the amount changed when taking the additional insurance, and made to conform to the augmented value of the property; but failing so to do, it, unfortunately, is not within the power of chancellor or jury to help him. (2 C. 199 Pa.)

*Richmondville Seminary v. Hamilton Mut. Ins. Co.*, 14 Gray Mass. 459; *Singleton v. Boone Co. Mut. Ins. Co.* 45 Mo. 250; 4 Metc. Mass. 206.

## RE-INSURANCE.

**1016.** *Condition of the policy.*—"Re-insurance, in case of loss, to be settled in proportion as the sum re-insured shall bear to the whole sum covered by the re-insured company."

**1017.** Chief-Justice PARK says:—

"*Re-assurance*, as understood by the law of England, may be said to be a contract, which the first insurer enters into in order to relieve himself from those risks which he has incautiously undertaken, by throwing them

upon other underwriters, who are called re-assurers. This species of contract has obtained a place in most of the commercial systems of the trading powers of Europe; and it is allowed by them at this day (A. D. 1787) to be politic and legal." \* \* \* "By the ancient laws of France such assurances were reckoned valid and perfectly consistent with equity and good conscience. '*Le Guidon*' (A. D. 1556) observes, 'that if it so happen that the insurers, after underwriting the policy, repent of their engagement, or are afraid to encounter the risk, they are at liberty to reinsure.'"

Park. Ins. 267 *et seq.*; 2 Valin Comm. 65; 1 Arnould Ins. 286, 290; Weskett Ins. 437; 1 Philips Ins. 254; Bunyon Ins. 127.

**1018.** *Re-insurance* is general throughout the continent of Europe as well as in the United States and Canada. In England it was formerly held to be a *special* contract, limited by statute to cases where the insurer became insolvent, bankrupt, or died; in either of which events the insurer, or his personal representatives or assigns respectively, may re-insure to the amount of the sum before insured; but it must be specified to be a re-insurance. This restriction was imposed A. D. 1746, repealed A. D. 1864 (19 Geo. II., c. 37, § 4,) in consequence of the use of *re-insurance* as a method for speculating in the rise and fall of premiums, and for "other purposes pernicious to a commercial nation, and destructive to those very benefits it was originally intended to promote and encourage." But at the present time it is practised extensively, among agency companies especially, it being a peculiarity in England that no agent can have more than one company. He is at liberty, however, to take any amount upon risks offered, and, when reported to the home-office, any excess above the line deemed safe to carry is duly reinsured, without any reference to the agent.

Emerigon 23, n. 207, 208; Marsh. 112; 1 Magens 80, 85, 93; 2 *id.* 190, 233, 271, 419; Andrew v. Fletcher, 2 Term R. 161; 3 *id.* 263; Beawes Lex Mercatoria 467; Wesk. 456; Civil Code L. C., § 2477; Angell Ins. 20; 1 Parsons Ins. 297; 1 Arnould 286, § 118, *et seq.*; 2 Benn. F. I. Cases 581; Ganitt v. Am. Central Ins. Co., 8 Ins. Law Jour. 664; Murly v. Prince, 2 Mass. 176; May Ins. 9, § 10.

**1019.** *Re-insurance* has frequently been confounded with *double insurance*. They both have relation to the perils embraced by a subsisting contract. The first, *re-insurance*, is a contract made by the insurer to cover his *liability*. The second, *double insurance*, is a contract made by the insured to increase his *security*. In *double insurance* the underwriters all share in the

loss *pro rata*; in *re-insurance* the *re-insurer* pays all that he re-insures, whether it be all or a part of the original insurance, without reference to the amount retained by the re-insured. While re-insurance is recognized in France as a valid contract, *double insurance* is prohibited by the Code, (989.) In England *re-insurance* is permitted and *double insurance* is unrestricted, except that the insured is limited to but one satisfaction. In this country both kinds of insurance are recognized, but with restrictive and modifying clauses. (1048.)

1 Park Ins. 120; Emerigon 23, n. 201; 2 Valin Comm. 65, 72; 2 Magens 171, §§ 20, 22; 1 Parsons 297, n. 1; Angell Ins. 142; 2 Benn. Cases 584; Annesly Ins. 64, and authorities *supra*.

**1020.** It is recognized as a valid contract in Canada by 27 & 28 Vic. c. 38, § 8; Dominion (Life Offices), 34 Vic. c. 9, § 4; (Ont.), 31 Vic. c. 32, § 4; Civil Code L. C. § 2477.

**1021.** On the continent of Europe this system is carried to such an extent, that companies are organized for the purposes of *re-insurance* only, confining their business almost exclusively to such excesses as offices doing a general business may have to dispose of. (72.)

**1022.** Under an *organized* system of "mutual guaranty" the most satisfactory results are obtainable without friction. The assured has no trouble in placing his insurance or in collecting his indemnity; he looks only to the individual company with which he deals. There is no *cutting of rates*, competition being unnecessary. *Over-insurance*, which can so readily result under that ominous phrase, "*other insurance permitted without notice*," is by this system most effectually checked and prevented—all *disputes* in the *adjustment* of losses are precluded, and through the mutuality of interest thus engendered, not only is the solvency of each guaranteed by the others, but the business is made remunerative to all.

**1023.** On the other hand, in *individual* operations, when a company takes lines too heavy to be safely carried by itself and re-insures in other offices—or where a company retiring from business re-insures its outstanding risks, without the precaution of taking up its own policies and substituting therefor

those of the re-insuring company (in which case it would be *selling, not re-insuring*)—such companies do not escape from, but rather add to the amount of their original liability by *guaranteeing the solvency of the re-insurers*—to the amount paid as premium upon such re-insurance at least; and such liability will continue to hang over them, like the sword of Damocles, ready to drop at any unwonted disturbance in the underwriting atmosphere, by which the solvency of the re-insurers may be affected until the termination of the several policies, either by expiration or cancellation. Hence, with insolvent companies closing out business, no final settlement can be made until every policy outstanding, even though re-insured, shall have expired; and State deposits, when made, cannot be withdrawn until every liability of the reinsured company shall have run off.

#### GENERAL PRINCIPLES.

**1024.** Re-insurance is an apt illustration of the difference between *insurable interest* and ownership. (718.) A party, by becoming an insurer of property, thereby acquires an insurable interest in its safety, though he has no ownership; and may protect himself by re-insurance against liability therefor. The value of his interest is the amount he may have at risk upon the property covered by his policy; and inasmuch as “the greater contains the less,—the whole a part,” he has an insurable interest in every portion of his liability, which by re-insurance he throws upon another.

3 Burr. 1512; 1 Philips Ins. 194; 1 Angell Ins. 20, 138-9; Marsh. Ins. 112; May Ins. 9, §§ 9, 10; 1 Arnould Ins. 286, § 118; *Luccena v. Crawford*, 3 B. & P. 75; 6 Robts. N. Y. 316; 1 Sandf. N. Y. 137; 17 Wend. N. Y. 359; 2 Comst. 235; 1 Benn. F. I. Cases 168; Flanders Ins. 30, n. 1; Parsons Ins. 312.

**1025.** He may not only re-insure the amount he has already insured, but the premium also, which he may pay the re-insurer. And when the policy makes no provision to the contrary, he may effect such *re-insurance* without any disclosure, in the policy or otherwise, that it is a *re-insurance*.

2 Valin Comm. 65, 67; Emerigon Ins. 201; 1 Philips Ins. 255; 5 Ins. Law Jour. 235, 473, 485; 2 Benn. F. I. Cases 582.

## THE CONTRACT.

**1026.** *Re-insurance* is a modification of the insurance contract. While the subject-matter of insurance is the same in the policy of *re-insurance*, the interest of the re-insured and the liability of the re-insurers are quite different. It is a contract against liability—not merely an indemnity.

Code of Cal. § 2048; Angell Ins. 138, N; 1 Benn. F. I. Cases 658; 17 Wend. N.Y. 357; Provincial Ins. Co. v. *Etna Ins. Co.*, 6 U. C. Q. B. 135.

**1027.** The *policy of insurance* is one strictly of *indemnity*—"that which is given to a person to prevent his suffering damage." The *policy of re-insurance* is something more; it is in the nature of a *guaranty*; "an undertaking to answer for another's *liability*, and collateral thereto." It is so considered in England, and there is designated as "*Guaranty insurance*." (1059.)

**1028.** If the contract were one of *indemnity* solely, it might be contended that the repayment of the amount paid by the *re-assured* upon the original policy would be the measure of liability, in which case proof of such payment only would be necessary; no proof of loss would be required. (See authorities cited *supra*.)

**1029.** If the liability of the re-insurer depends entirely upon the solvency or bankruptcy of the *re-insured*, in many cases he will not become chargeable at all, or but to a nominal amount only, according to the extent of such insolvency or bankruptcy, and the paramount intention of the re insurance contract—which is full indemnity against *liability*—would be subverted.

3 Ins. Law Jour. 769; 1 Sandf. N.Y. 157, s.c. 2 Comst. 235; 2 Benn F. I. Cases 588.

## THE RE-INSURED.

**1030.** The claim of the *re-insured* rests upon the *liability* to pay the loss to the original insured, and not upon the greater or less ability to pay it in full. (718.)

Emerigon 201; Marsh. Ins. 692; Shaw's Ellis Ins. 61; Angell Ins. 190; 2 Benn. F. I. Cases 588; Gault v. Am. Cent. Ins. Co., 8 Ins. Law Jour. 664; 10 Cush. Mass. 433.

**1031.** The *re-insured*, when not restricted by the stipulations of the policy, may collect of the re-insurer before payment to the original insured. "He is entitled to recover, not what he may have paid, but *all that he ought to pay or has become liable to pay*; and his legal obligation to pay is not weakened by his inability to pay;" so that if the company *re-insured* become insolvent, the *re-insurer* is not released from payment *in full* by reason thereof; but must pay the same, in case of loss, to the receivers of the *re-insured* company, and not to the original insured.

3 Barb. Chy. N. Y. 63, case of *Herckenrath v. Am. Mutnal*; *Hone v. Mut. Safety Ins. Co.*, 1 Sandf. 137, s. c. 2 Comst. N. Y. 235; *May Ins.* 10; 1 *Arnould Ins.* 288; 1 *Parsons Ins.* 300; 3 *Ins. Law Jour.* 757; 9 *Phila.* 292; 2 *Benn. F. I. Cases* 589; 4 *id.* 230; *Flanders Ins.* 32; *Gantt v. Am. Cent. Ins. Co.*, 8 *Ins. Law Jour.* 664, 671.

**1032.** EMERIGON goes further and says:—

"The *reinsurer* is held to pay the whole amount for which he re-insures without regard to the circumstance that the re-assured *may have procured an abatement from the first assured*, or may be unable, in consequence of bankruptcy, to pay the latter in full."

*Emerigon Ins.* 201; *Valin Comm.* 70; *Park Ins.* 277; *Marsh. Ins.* 113.

And such is the recognized doctrine under re insurance to this day. Indeed, it was under the operation of this principle that so many frauds were committed in England, when *wagering* was rife (50), and caused the enactment of the restrictive statute in that country. (1018.)

#### THE ORIGINAL INSURED.

**1033.** The original insured has no interest in the *policy of re-insurance*, even though the re-insured company should become bankrupt during the currency of the original policy.

*Herckenrath v. Mut. Safety Co.*, 3 Barb. Chy. N. Y. 63; *Hastie v. De Peyster*, 3 *Caines N.Y.* 190; *Carrington v. Comm'l. Fire Ins. Co.*, 11 Barb. N. Y. 152; *May Ins.* 11; *Angell* 141; *Emerigon Ins.* 201; 2 *Valin Art.* 20; 2 *Magins Ins.* 233; 2 *Benn. F. I. Cases* 589, 604.

**1034.** Chief-Justice PARK says:—

"It was a distinguishing characteristic of this species of contract, that, notwithstanding a *re-insurance*, the first contract subsists as at first, without change or amendment." (*Park Ins.* 272.)

Chancellor KENT says:—"It is a perfectly distinct contract," which is the purport of the decisions of all our courts.

1 Parsons Ins. 301; 3 Ins. Law Jour. 757; 3 Barb. Ch. 63, *supra*.

**1035.** POTHIER says:—

"The risks of the insurer form the subject of the re-insurance, which is a new and independent contract, not at all concerning the insured; who, consequently, can exercise no power or authority with regard to it."

**1036.** "The insurer cannot turn the original insured over to the re-insurer without his consent."

1 Philips Ins. 55; Bell's Law Dicty., Title "Insurance," 403.

**1037.** EMERIGON says:—

"The re-insurer is wholly unconnected with the *original* owner of the property insured; and, as there was no obligation between them originally, no one is raised by the subsequent act of the first underwriter." (Emerigon, 9,201.)

**1038.** The re-insurer having no connection with the *original insured*, is bound by the adjustment of loss as made by the re-insured, unless fraud or error can be shown. "He, nevertheless, has an interest in any *salvage*, and has a right to ask that it should be prudently and carefully managed."

**1042.)**

Del. Ins. Co. v. Quaker City Ins. Co., 3 Grant's Cases 71; N. Y. State Marine v. Protection Ins. Co., 1 Story C. C. 458; Flanders Ins. 35, and authorities cited.

THE RE-INSURER.

**1039.** The re-insurers stand in the same position to the risk assumed as the re-insured stood at the time, *subject to all the specifications, terms, and conditions of the policy of the re-insured*, thus abrogating the conditions of their own policy and becoming bound in all things by the terms of the original policy, *as between the re-insured and the original insured*, thus incorporating into the policy of the re-insurers stipulations and exceptions which may be antagonistic to their own.

Eagle Ins. Co. v. Lafayette Ins. Co., 9 Ind. 443; 4 Benn. F. I. Cases 230-4; Flanders Ins. 34 u; 41 Ind. 59.

Where it was objected by the re-insurers that the *ordinary form of a fire policy* was not applicable to a case of *re-insurance*, and that, in consequence, recovery could not be had upon it. BRONSON, J., HELD:—

“The objection taken to the form of the policy contains no legal proposition.” (1045.) (17 Wend. N. Y. 359.)

#### DEFENSE OF RE-INSURERS.

**1040.** *Re-insurers* may make every defense which the *re-insured* could then make, when a loss remains unadjusted between the *re-insured* and the party originally insured, *on the terms of the policy*; and where the *re-insured* is not liable on the original policy, a recovery cannot be had against the *re-insurer* on his policy.

May Ins. 10, 11; 1 Story C. C. 458; Carpenter v. Prov. Wash. Ins. Co., 16 Peters U. S. 496; 1 Arnould Ins. 289; and authorities *supra*.

**1041.** If the *re-insurer* withhold payment until the *termination of a suit* between the original insured and the re-insured company, he will be liable for the costs and expenses of such suit incurred by the re-insured company.

Gantt v. Am. Cent. Ins. Co., 8 Ins. Law Jour. 664; 5 Ins. Law Jour. 572, 623, and authorities *supra*.

**1042.** “The contestation of the suit by the re-insured must be just and reasonable; the expenses must be reasonably incurred; the conduct of the re-insured must be *bona fide*, and in the exercise of sound discretion. But expenses and costs wantonly and unnecessarily incurred by the re-insured in a plain case of loss, where there is no reasonable ground of defense, or where the re-assurers do not sanction the contestation, either expressly or by implication (silence after being notified of an intention to contest), can never constitute a just charge against the latter.” (1 Story C. C. 458.)

Hastin v. De Peyster, 3 Caines N. Y. 190; N. Y. Cent. Ins. Co. v. Protection Ins. Co., 100 N. Y. 468; May Ins. 10.

#### OTHER INSURANCE.

**1043.** The clause as to *double, or other insurance*, is inoperative in a policy of *re-insurance*, unless the *re-insured* has made other *re-insurances*.

A clause in a policy providing "in case there is *other insurance*, prior or subsequent, on the property insured, the re-insured shall be entitled to recover, in event of loss, only a proportionate part thereof," is held to refer entirely to *double re-insurance* on the same interests, and if there be no other *re-insurances* the *re-insurer* is liable for the amount of loss within the policy. (996.)

Johnson v. N. B. & Merc. Ins. Co., 1 Holmes C. C. U. S. 117; Mut. Safety Ins. Co. v. Hone, 2 Comst. N. Y. 235; 2 Benn. F. I. Cases 590, 592.

## CONTRIBUTION.

**1044.** When the policy of the original insured contains provisions for *contribution* between the several insurers, and there should be more than one policy on the subject of insurance, the *re-insured* will recover from the re-insurer any loss he has to pay, or may become liable to pay, within the amount of his policy, notwithstanding.

Howe v. Bokee, Receiver Mut. Safety Ins. Co., 1 Sandf. N. Y. 137, s. c. 2 Comstock 235; 2 Benn. F. I. Cases 579.

## PROOFS OF LOSS.

**1045.** In the contract of *re-insurance*, the condition of the policy requiring *notice* and *preliminary proofs*, in case of loss, is complied with when the first underwriter transmits to the *re-insurer* such *notice* and the *proofs* made by the original insured. (2367.) BRONSON, J., says:—

"When, in a contract of re-insurance, a policy of the ordinary form is used, except that the word *re-insure* is employed instead of that of *insure*, the requirements of the contract that the parties insured shall give notice, render an account, signed with their own hands, and verified by their oath, and procure a certificate of a magistrate as to their character, circumstances, and loss, are complied with in contemplation of law, if the party originally insured gives notice, renders an account, and produces a certificate to his immediate assurers, and they forthwith transmit such *notice* and *preliminary proofs* to the underwriters of the policy of the re-insurance." (1039.) (17 Wend. N. Y. 359, 1 Benn. F. I. Cases 659.)

**1045a.** Where it was contended that the *notice* and such *proofs* of the original insured did not amount to a compliance with the requirements of the re-insurer's policy—

HELD, by the Supreme Court of New York, BRONSON, J.: "This was," in the words of the condition, "as particular an account of their loss and damage, as the nature of the case would admit." "The *oath* required was that of the original insured and not of the re-insurers." "These were facts resting peculiarly in the knowledge of the owner of the property, and it was *his oath* that the re-insurers were interested to require."

N. Y. Cent. Ins. Co. v. Nat. Protection Ins. Co., 20 Barb. 468; Yonkers & N. Y. Ins. Co. v. Hoffman, 6 Rob. N. Y. 316; Consolidated F. I. Co. v. Cashow, 41 Md. 59. See (2367-8-9) *infra*.

#### LIMITATION.

**1016.** Where loss occurred in November, A. D. 1854, and was paid by the original insurers August 9, 1855, who then brought suit against the re-insurers August 8, 1856—

HELD: "That the loss or damage referred to in the *re-insurance* policy was the injury to the property, and not the payment of the loss by the original insurers, and the action was too late." Provincial Ins. Co. v. *Ætna* Ins. Co., 16 U. C. Q. B. 135.)

#### MAGISTRATE'S CERTIFICATE.

**1017.** The same judge (BRONSON, **1045.**) further HELD:

"The same remark is applicable to the *certificate of a notary*. . . . A *certificate* concerning the character and circumstances of the re-insured, and that there had been no fraud or evil practice on their part, would have been an idle and unmeaning ceremony. To hold that this was what the parties intended, would be following the letter while we lost sight of the spirit of the compact." (1914.) (17 Wend. N. Y. 359.)

#### PRO RATA AND OTHER STIPULATIONS.

**1018.** Upon the European continent, where the contract of *re-insurance* has been in constant use, and its principles firmly established for more than two centuries—as well as in England at the present day—no *pro rata* or other modifying stipulation is to be found in the policy. The contract is regarded as one of strict indemnity, amounting to a guaranty; and such *indemnity is universally held to be the whole sum re-insured*, should the loss require it, without reference to the original insurance, or the manner or terms of settlement by the re-insured. (**1032.**) And such was held to be the construction of the contract in New York as early as A.D. 1847, when SANFORD, J., HELD:—

"A *total loss* under a re-insurance policy, providing for the estimation of damage according to the cash value of the property, is the *whole amount re-insured*, not exceeding the whole value of the *re-insured subject* in the policy of re-insurance, and *not the proportion which the amount re-insured bears to that originally insured.*" (1 Sandf. N. Y. 137, s. c 2 Comstock 235.)

This decision was affirmed upon appeal. An example under this ruling would be as follows :—

Amount of the original insurance . . . . .	\$5,000
"    "    re-insurance . . . . .	2,500
"    "    loss . . . . .	2,500

The re-insurer will pay the whole loss, \$2,500, without contribution from the re-insured, who thus gets what he bargained for, *indemnity*.

Since the decision just referred to, "modifying clauses" of several kinds have been introduced into *re-insurance* practice in this country, with what effect will presently be shown.

Some of these clauses are as follows :—

**1049.** "Loss, if any, payable to the assured upon the same *terms and conditions*, and at the same time, as contained in the original policy."

**1050.** "Re-insurance for any other insurance company to be on the basis of joint liability with said company, and in no event will this company be liable for a sum greater than such portion as the sum hereby re-insured bears to the whole sum insured on the property by the company re-insured; and in case of loss, this company to pay their *pro rata* proportion at the same time, manner, and form as the company re-insured."

This clause is to be found in the policy of the *Ætna*, of Hartford, A. D. 1858, and is the first *printed* stipulation appearing in the policy. It would seem, however, that it had been claimed to be customary as early as A. D. 1847, in the case cited above, to apply the *pro rata clause* to the adjustment of losses under re-insurance. Such usage can be readily accounted for by the fact that re-insurance was *first* used in marine underwriting, where the conditions of average are always operative, and losses would naturally be adjusted in the same manner as under the original insurance; and the transition to the *fire* branch was a very natural one. This *Ætna* clause was adopted by some few of the New York city companies, in A. D. 1864-'5.

**1051.** In A. D. 1860, we find the following in the policy of "*The Insurance Company of North America*":—

"Re-insurance for any other insurance company to be on the basis of joint liability with said company, and in the event of loss, this company to pay its proportion of said loss sustained by said company under their policy."

**1052.** "Subject to the same risks, valuations, conditions, and adjustments as are or may be taken by the re-insured; and loss, if any, payable *pro rata* and at the same time with the re-insured."

The first paragraph of this clause inures to the benefit of the re-insured by compelling the re-insurer to accept the *adjustment*, as made by the re-insured. (**1039**.) The second paragraph refers to the *payment* of any loss, and is a material<sup>1</sup> modification of the contract.

**1053.** In considering the effect of these several "modifying clauses" upon the reinsurance contract, but *two* points would seem to require further comment;—

1st. "*Payable at the same time, manner and form as the company re-insured.*"

**1054.** In explanation of this *first* stipulation, and those of similar meaning, it would seem to be enough to refer to the fact already stated (**1039**), "*that the terms and conditions of payment by the re-insurers are governed by the conditions of the original policy,*" where the *time, form, and manner* in which the re-insured was bound to pay the loss will be found fully set forth; and there is nothing in this clause to alter them. The fact that the re-insured cannot live up to his contract as to *terms* and *time* is no relief to the *re-insurer*; if solvent, he must pay as therein agreed.

<sup>3</sup> Ins. Law Jour. 390, 467, 763; Phil. Safe Dep. Co. v. Fame Ins. Co., 9 Phila. 292.

2d. "*Payable pro rata,*" or "*such portion as the sum hereby insured bears to the whole sum insured upon the property.*"

**1055.** Under the *second* stipulation, there can be no question as to the amount to be paid by the re-insurers; the meaning of the term *pro rata* becomes at once apparent from the context. *But the effect of this pro rata stipulation, when*

*operative, is simply to transform the contract of re-insurance into one of co-insurance between the re-insurer and the re-insured, and each party becomes individually liable for his pro rata share of the loss, without reference to the other, except that the re-insurer will pay his proportion to the re-insured.*

In the single instance where the underwriter re-insures for the *whole sum* he has insured, this clause—being inoperative under full insurance—would permit him to be fully indemnified; but where a portion only is re-insured, the clause transforms the contract into *double* insurance, and each company is liable, *pro rata*, as the amount re-insured by each bears to the original insurance, as if they had respectively insured those amounts.

The following examples will illustrate :—

1st. Original insurance.....	\$5,000
Re-insurance.....	5,000
Loss total, or in excess of....	5,000

The re-insurer pays the whole, as the *pro rata* clause becomes inoperative, his insurance being for the full amount.

2d. Original insurance.....	\$5,000
Re-insurance .....	2,500
Loss partial .....	2,500

In this event, each company will be liable for its *pro rata* share of the loss, as the re-insurance bears to the original insurance, or *one-half*; each company will be liable to pay \$1,250; without the *pro rata* clause, the re-insurers would pay the entire \$2,500. (1048.)

#### CONCEALMENT OR MISREPRESENTATION.

**1056.** The duty of a full and complete disclosure of all *material* circumstances by the *re-insured* is no less binding in cases of *re-insurance* than in those of the original insured; and sometimes the rule is even more strict in the former than in the latter, as the party applying for *re-insurance* is obliged to communicate *all material facts* in relation to the *character* of the original insured—a duty which is not incumbent upon the latter in making his own application. The *re-insured*, however, is not bound to declare his own *opinion* of the risk. (605.)

2 Magins Essays 232; 1 Parsons Ins. 299; Gantt v. Am. Cent. Ins. Co., 8 Ins. Law Jour. 664.

**1056a.** In cases of *re-insurance*, the *re-insured* is bound to communicate, not only all the *representations* made to himself when he subscribed the policy, but all the knowledge and information *he had subsequently acquired*. The *concealment*, whether from *fraud* or *accident*, of any circumstance then known to him, material to the risk, has the same effect on the validity of the contract as that of the original insured.

May Ins. 18; Flanders Ins. 31, n. 2; 17 Wend, N. Y. 359.

**1056b.** Facts coming to the knowledge of an insurer that the insured bore a bad character; that his premises had been several times destroyed by fire, when fully insured; the insurer then *re-insured* without communicating these facts to the re-insurers. The suppression defeated the policy of *re-insurance*. (578.)

2 Am. Lead. Cases 458; 1 Benn. F. L. Cases 654.

**1057.** When a company applied for and obtained *re-insurance* on sugar and molasses contained in a plantation sugar-house, saying: "We have buildings;" and after a loss it was ascertained that the re-insured company had no insurance on the buildings (572) —

HELD: "The representation, being one that might properly influence the mind of the re-insurers, was a *material* matter, and being *false*, would vitiate the policy."

La. Mut. Ins. Co. v. N. Orleans Ins. Co., 13 La. Ann. 246; Bunyon Ins. 128

#### RE-INSURANCE BY AN AGENT.

**1058.** Where an agent of one company was, unknown to that company, also the secretary of another company, and *re-insured* the company of which he was the secretary in the company of which he was the agent, without the knowledge or consent of such company, it was held that such policy was invalid. On the other hand, under a similar state of facts it has been HELD:

"That, having acted within the general scope of his authority in making such contract of re-insurance, he clearly bound the re-insuring company, notwithstanding that he was exceeding his authority." And further: "That the mere fact that he was also the secretary of the re-insured company was not to be regarded as notice to such company that he was exceeding his instructions."

Utica Ins. Co. v. Toledo Ins. Co., 17 Barb. N. Y. 192; N. Y. Cent. Ins. Co. v. Nat. Protection Ins. Co., Kern. N. Y. 88; Merc. Mar. Ins. Co. v. Hope Ins. Co., C. Ap. St. Louis, Mo., March, 1880; St. Nicholas F. I. Co. v. Merchants Ins. Co., N. Y., C. A., 1880.

**1059.** The following is the form of a re-insurance policy in use in London, where it is designated as "*Fire Guaranty*," or "*Counter-assurance*":—

GUARANTY POLICY.

No. .... £ .....

MEMORANDUM.—That the *Globe Assurance Society* hereby *guarantees*, out of the funds of the said Society, to the Directors of the *World Assurance Company*, the sum of ..... sterling, in part of that Company's risk, to the extent of ..... upon property assured by them under their Policy No. ...., and dated the ..... day of ..... 18...., issued to and in the name of ....., the therein designated Assured, the duty payable to Government in respect of such Assurance, being first paid and accounted for by the said *World Assurance Company*.

The said Guaranty is from the ..... day of ..... 18...., to the ..... day of ..... 18...., both inclusive, and so long thereafter as shall be expressed in the usual Renewal Receipt of the Society, and is subject to the Provisions of the Deed of Settlement and Conditions of Fire Assurance of the *Globe Assurance Society*.

Dated the ..... day of ..... 18....

Consideration	}	Present payment, £ .....
		Future annual payment, £ .....
	}	.....
		.....
		.....
		Directors.

Signed in presence of

.....

It will be noted here that the re-insurance is made subject to the terms of the re-insuring policy, instead of the re-insured, as is the practice in most other countries, and as would be the case if the policy were silent upon the subject.

## ASSIGNMENT.

**1060.** *Condition of the policy*.—"If this policy be assigned before a loss, without the consent of the company indorsed hereon \* \* \* then this policy shall be void."

**1061.** An *assignment* is a transfer by writing, as distinguished from one by delivery.

*There can be no assignment without a change of interest*; hence, one cannot *assign* an instrument to himself; nor can two men, equally interested, *assign* to themselves.

Bunyon Ins. 10, 11, 12, 143; 1 Philips Ins. 68; 1 Benn. F. I. Cases 414, 600; Angell Ins. 9; 5 Ins. Law Jour. 200, 463.

**1062.** A valid *assignment* of the insurance contract, with consent of the underwriters, in the broadest legal sense by statute or otherwise, vests in the *assignee* all rights of the *assignor*, legal and equitable, including that of action. The stipulations of most, if not all fire policies, require that all *assignments* of the contract, or of the subjects at risk thereunder, to be valid, must be assented to by the underwriter, in writing thereupon. This condition has formed a part of the fire policy from the earliest days; and has, in numerous decisions of the courts, been held to be a "perfectly legal stipulation," and one to be strictly construed. In England the periods within which notice of assignment must be given vary with different offices, as *twenty-one* days, *forty-two* days, *three months*, "as soon as possible." Such assignment of the contract, however, vests the assignee with such rights only as the assignor enjoyed under the instrument at the time of the assignment, which he takes subject to all of its terms and conditions.

Ellis v. State Ins. Co., S. C. Iowa; 2 Valin Comm. 45; Wiggin v. Suffolk Ins. Co., 18 Pick. Mass. 145; Waters v. Allen, 5 Hill N. Y. 421; Lazarus v. Commonwealth Ins. Co., 5 Pick. Mass. 76; 19 id. 81; Bright v. N. Y. La Fayette Ins. Co., 2 Hall N. Y. 372; Clark v. Manufrs.' Ins. Co., 8 How. 235; Smith v. Ins. Co., 1 Hill N. Y. 497; s. c. 3 id. 502.

**1063.** The fire insurance contract being a personal one, not negotiable in its character, and the underwriter having the right of personal selection, may be willing to insure one person and not another, as the transfer might materially affect the risk, or might virtually create a new risk which the underwriter might not be willing to assume. Hence, the consent of the insurer would seem to be absolutely essential, and it is so made in the form of a condition-precedent to the validity of any *assignment* of the contract of fire insurance itself, or of all or any of the subjects covered thereby. By the custom of marine insurance, policies are transferable freely with the bills of lading; no such custom obtains as to policies in fire insurance, but "Certificates of Insurance" (303) are so transferred.

Sovereign F. I. Co. v. Peters, Dig. S. C. R. 204; Ketshum v. Protection Ins. Co., 1 Allen N. B. 136; Dey v. Po'keepsie Mut. Ins. Co., 23 Barb. N. Y. 623; Courtney v. N. Y. City Ins. Co., 28 Barb. N. Y. 106; Bayles v. Ins. Co., 3, Dutch. N. J. 163; Lyecoming Ins. Co. v. Mitchell, 48 Pa. St. 368; Le Claire v. Craspe, M. C. R. 22, 5 L. C. R. 487; Croase v. Br. America Ins. Co., 2 R. L. 735.

**1064.** When underwriters *consent to an assignment*, they may reserve all of their rights. The form usually adopted for this purpose, and printed upon the policy, is as follows:—

"The ——— Company hereby consent that the interest of ——— in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to ———"

2 Duer Ins. 67; 3 Metef. Mass. 66; 2 Benn. F. I. Cases 107; 3 Ins. Law Jour 463.

**1065.** It is not necessary that representation of the nature of the interest of the assignee in the property be made upon application for assent to an *assignment*. The rule requiring an applicant for insurance to set forth the nature of his interest does not apply in this case.

Cumb. Valley Ins. Co. v. Mitchell, 48 Pa. St. 374; *id.* 368.

#### OTHER INSURANCE UNDER ASSIGNMENT.

**1066.** If the underwriter consent to an *assignment* of the clause requiring notice of "*other insurance*" thereafter made becomes a condition between the company and the *assignee*, and the amount of the interest of the latter ceases to be such

between them and the original insured; hence, when a policy has been *assigned* with the consent of the underwriters, it is no longer in the power of the *assignor* to do anything to impair the validity of the policy in the hands of the assignee; nor will insurer be excused from liability to the latter by payment to or release from assignor.

*Andrews v. Beecher*, 1 John's Cases 411; *Wardell v. Eden*, 2 *id.* 121; *Bates v. N. Y. Ins. Co.*, 3 *id.* 242; *Jones v. Willer*, 13 Mass. 304; *Roberts v. Traders Ins. Co.*, 17 Wend. N. Y. 631; 2 Benn. F. I. Cases 126, 295; 3 *id.* 419, 533.

#### TRANSFER OF THE SUBJECT.

**1067.** The stipulation that "if this policy shall be *assigned* before a loss, without the consent of the company indorsed hereon, then this policy to be void," has been held to refer to the interest of the insured in the property or subject covered, and not in the contract; for a policy can be of no value to the holder unless he has sufficient *interest in the subject* covered thereby to warrant a recovery in case of loss. *Nor does the mere sale and transfer of the interest of the insured in the subject covered operate as an assignment of the policy as incidental to the subject.* And when the insured has no interest in the property at the time of the loss, the policy is void, although the loss is, by the terms of the policy, *made payable to a third party, and such third party has an interest in the property.*

Civil Code L. C. §§ 2483, 2576; *Robert v. Macdonald*, Q. B. L. C. 590; *Bilion v. Manufacturers' Ins. Co.*, 7 Am. Law Reg. 611; *Parsons Ins.* 56, n. 2; 1 *Philips Ins.* 59, § 87, and authorities there cited; 1 Benn. F. I. Cases 563; 4 *id.* 266; 2 *id.* 164, 127, 297; 1 Hill N. Y. 497; 3 *id.*, 506; *Hill & Denio* N. Y. 133; 69 Me. 469.

#### ASSIGNMENT OF THE CONTRACT.

**1068.** "The *assignment of a policy* of insurance may be viewed in two different aspects: In one of them it passes the insurance, considered as such; in the other it is a mere equitable transfer of the right to receive any sum that may be due in the event of a loss."

It is held that the policy is not an incident to the subject covered, and, as an independent chose in action, it does not pass with a sale or transfer of the property, unless by an *assignment* or delivery; and that an assignment of the policy, made after the transfer of the subject, is wholly void.

Shaw's Ellis Ins. 145; 16 Wend., N. Y. 385; 2 Benn. F. I. Cases 126, 154; 1 Hill N. Y. 497; S. C. 3 *id.* 508; 3 Brown's Par. Cases, 497; 16 Peters U. S. 502.

**1069.** When the condition of the policy is, that "the interest of the insured in this policy is not assignable unless by consent manifest in writing, and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this policy shall be void and of no effect."

**HELD:** "That the clause is to the effect that the *interest* of the assured in this policy is *not assignable*; and it is a transfer or termination of the *interest* of the assured in the policy and not in the premises insured, which, when made without consent, is to avoid the policy under this condition."

16 Peters U. S. 495; 29 How. U. S. 71; 2 Atkyns 554; Brown's Par. Cases 497; 1 Phillips Ins. 477, § 879, and authorities cited; 2 Benn. F. I. Cases 95; 16 Angell Ins. 249, 257; Park Ins. 452; 69 Me. 409; 19 Pick Mass. 81; 5 *id.* 76; Hill & Denio N. Y. 133.

**1070.** When loss is merely made payable to a third party, he is entitled to recover *only* the interest of the insured therein, whatever that may prove to be at the time of the loss. **(1071.)**

**HELD,** and affirmed upon appeal: That the simple indorsement of "*For value received pay the within in case of loss to A. B.,* even when assented to by the insurer, *is not an assignment of the contract* to the said A. B., but only of the right to the money that may be due to the assignor in case of loss.

**1071.** In the case of a sale and transfer of sugars, under insurance, the policy was assigned therewith, indorsed as follows "*Payable in case of loss to Edward C. Bates.*" The policy thus indorsed was sent to the company with a request "*that the indorsement be approved,*" but nothing was said of the sale and transfer of the sugars. The policy was returned duly indorsed "*Consent is hereby given to the above indorsement.*" A loss occurred in which the sugars were destroyed; the company declined to pay the insurance on the ground that *the insured was not the owner of the property* at the time of the loss, and *that the owners of the sugars were not the party insured* under the policy. At the trial, a verdict was given against the company. Upon appeal, this verdict was set aside, and a decision given in favor of the company; the judge, in the course of his remarks, saying:—

"Viewed in any light, the plaintiff cannot recover. Purchase of the property insured was made by the plaintiff, but he did not secure the consent of the company to the sale, and they had no notice of the transfer prior to the loss. They consented, in case *the property of the assured* should be destroyed, that they would pay the amount to the plaintiff; but they never consented that the policy should continue for the benefit of any one except the assured."

Bates v. N. Y. Equitable Ins. Co., 10 Wall, U. S. 33; 10 Cush. Mass. 346; 6 Gray Mass. 172; 8 *id.* 29; 109 Mass. 573; 3 Dallas Pa. 510, 511; 17 N. Y. 391; *id.* 401; 31 Pa. St. 438; 53 Ill. 151; 6 R. I. 517; 2 Ins. Law Jour. 769; 5 *id.* 146; 6 *id.* 434; 8 *id.* 577; 9 *id.* 91, 165; 29 How. U. S. 71; 1 Benn. F. I. Cases 254; 4 *id.* 299; 81 Me. 633; 9 Vroom. N. J. 140; Gills & Johns. Md. 337; 8 Grants Ch. 523.

**1072.** *The deposit of a policy of insurance with a creditor of the insured*, as security for a debt, gives such creditor a lien upon the proceeds of the policy, and his rights are not affected by the prohibitory clause against assignment without consent.

Bibend v. Liv. & Lond. & Globe Ins. Co., 30 Cal. 78; Wells v. Archer, 10 Serg. & R. Pa. 412; Ins. & Trust Co. v. Neve, 2 McMull, So. C. 237; Ellis v. Kreutginger, 27 Mo. 311. Per Contra (**1075**.)

**1072a.** "A policy of insurance, void *ab initio*, is not made valid by *assignment* with the assent of the underwriter; the assent of the insurer to a transfer of a policy does not give force to a policy already utterly void, but simply authorizes a transfer of the policy for what it is worth. The assent of the underwriter to an assignment does not operate as a new contract, and does not enlarge the engagement of the insured, or enable them to waive any of the conditions of the original contract."

City Fire Ins. Co. v. Doll, 35 Md. 89; 4 Benn. F. I. Cases 822; Eastman v. Carroll Co. Mut. F. I. Co., 45 Me. 307; Merrill v. Farm & Mechs. Mut. F. I. Co., 48 *id.* 285; Roberts v. Traders Ins. Co., 17 Wend. N. Y. 631; Conover v. Albany Mut. Ins. Co., 3 Denio N. Y. 254; s. c. 1 Comst. 290; Tillon v. Kingston Mut. Ins. Co., 1 Selden N. Y. 405.

**1073.** In the matter of partnerships, where changes are made in the firm, the adjudications have not been harmonious. The general principle in such cases is well expressed by Judge Millar, U. S. C. C. Dist. Minn., in the case of Drennan v. Lond. Assur. Assoc. (13 Ins. Law Jour. 706). He says: "The sale or transmutation of the various interests between partners themselves, nobody else having the control, and leaving the posses-

sion where it was, does not invalidate the policy; but the introduction of a new partner, with an investiture of an interest in him which he did not have before, does avoid the policy." For particulars of partnership interest see (1379).

**1074.** By Sec. 2766, Revised Code of Georgia, "A policy issued to several may be transferred to one of the assured without the consent of the insurer." So in New York: a sale by a retiring partner to his co-partners, of his interest in the firm is not a breach of the condition making the policy void if the property is conveyed without the consent of the insurance company. (*Hoffman v. Aetna Ins. Co.*, 32 N. Y. R. 405, and cases there reviewed; 2 Ins. Law Jour. 134.)

**1075.** Where the condition of the policy stipulated that "the policy shall not be assignable without the consent of the company expressed thereon. In case of assignment without such consent, whether of the whole policy or of any interest in it, the liability of the company, by virtue of such policy, shall thenceforth cease," and the policy was assigned as collateral security for money loaned, without consent of the company being first obtained; and before the loss the subsequent annual premium was paid while the policy was thus held as collateral. HELD: That the condition was perfectly legal, and the insured could not recover.

*Farrel v. Oxford Fire & Life Ins. Co.*, S. C. Pa., Feb., 1871, and authorities cited.

**1076.** *If the insured be permitted to retain possession of the policy after assignment*, and afterwards assigns and delivers it to a third party, whether absolutely or as security for a debt, the equity of the person to whom it is thus delivered, when acting in good faith, and without notice of prior assignment, is superior to that of the original assignee, and entitles him to retain to his own use all moneys that the insurers may have been compelled or have consented to pay.

*Wells v. Archer*, 10 Serg. & R. Pa. 412; 1 Phillips Ins. 74, 2592, 100; *Brinsley v. City Fire Ins. Co.*, 26 Conn. 165; 2 Duer. Ins. 61.

## ASSIGNMENT OF THE LOSS CLAIM.

**1077.** *No assignment of a policy should be assented to after a loss.* The interest of the insured, being a mere chose in action and no longer guarded by the restrictive clause, may, like any other debt, be assigned without the consent of the company; *all stipulations in the policy against assignment after a loss are simply null and void.*

**1078.** HELD: That an assignment of the interest of the insured, executed after a loss occurs, carries, not the policy, but the claim or *debt against the insurer for the loss*, and is therefore not a breach of the restrictive clause against assignment without consent. The condition has no application after the risk has ceased.

Goit v. National Protect. Ins. Co., 25 Barb. N. Y. 189; Courtney v. N. Y. City Ins. Co., 28 id. 116, 4 Benn. F. I. Cases 8; Brichta v. N. Y. Lafayette F. I. Co., 2 Hall N. Y. 372; Carroll v. Chart. Oak Ins. Co., 38 Barb. 402; s. c. 40 id. 292; 1 Abb. Dec. 316; Manley v. Ins. Co. N. Am., 1 Lans. N. Y. 20; Carter v. Humboldt Ints. Ins. Co., 12 Iowa 57; West Branch Ins. Co. v. Helpenstein, 40 Pa. St. 289; Walters v. Washington Ins. Co., 1 Cole, Iowa, 404; 4 Benn. F. I. Cases 181, 184, 269, 565; Hughes v. Mut. F. I. Co., New Castle, 9 U. C. Q. B. 387; Spare v. Home Mut. Ins. Co. Cal., U. S. C. C. Dist. Oregon, Aug. '83, 6 Ins. Law Jour. 78.

## ASSIGNMENT IN BANKRUPTCY.

**1079.** A general *assignment* by the insured, of all his personal estate, for the benefit of all creditors, *without the consent of the insurer*, does not void his policy, as he still holds an insurable interest in the estate, unless it is made a condition precedent of such *assignment* that all debts shall be released; and even then an insurable interest will remain, if there be or probably may be a surplus after paying the debts.

4 Benn. F. I. Cases 407; 8 Ins. Law Jour. 267; Shaw's Ellis Ins. 72 n.

**1080.** It is a general principle of law, that when property insured against fire is taken into custody of the law for the benefit of creditors, the insurance will remain valid without consent of insurers until the property is sold by the assignee.

2 Abbott U. S. 67; 5 Foster N. H. 289; 3 Benn. F. I. Cases 469.

**1081.** An *assignee in bankruptcy* (involuntary) has, by law, the power to control the property committed to his charge, paramount to all others. But the law does not give to, or invest in him, the absolute ownership, in his own right, of the pro-

erty. In other words; the *assignee* is a mere agent of the debtor, to use his property in the payment of his debts. It follows then, that the bankrupt remains as much interested in the insured property after, as before *bankruptcy*; and the *assignee* does not acquire such interest in the policy, nor in the property under his protection, as to work a forfeiture under the condition of the policy.

4 Ins. Law Jour. 647; 8 *id.* 182; 9 *id.* 56; Mt. Vernon Mfg. Co. v. Summit Co. Mut. Ins. Co., 10 Ohio St. 347.

**1081a.** "Covenants not to assign or transfer are broken only by *voluntary* transfer or assignment. Hence, *insolvency*, being a *voluntary* proceeding on the part of the debtor himself, is a breach of the covenant not to assign, and works a forfeiture of the contract; while in *bankruptcy*—being an *involuntary* proceeding—whatever passes, passes by force of the statute and for the purpose of effecting the objects of the statute, and works no forfeiture.

Adams v. Ins. Co., 29 Me. 292, 3 Benn. F. L. Cases 30; Perry v. Ins. Co., N. Y. C. A., 4 Ins. Law Jour. 673, 403.

**1082.** In the U. S. Dist. Court for N. Dist. Ohio (Starkweather v. Cleveland Ins. Co., 2 Abb. U. S., 67 (1870), in a case of loss under a policy held by the assignee of an *involuntary bankrupt*, without consent of the company, the presiding judge held the following language:—

"On these authorities, it seems clear to me that the clauses in this policy forbidding its assignment, and the change and transfer of the title to the property, have no more effect than similar words in leases. Both are contracts between two persons, with this difference, that leases are under seal, and therefore of a higher nature. The cases cited establish the doctrine that *bankruptcy and judgments are involuntary, and do not avoid covenants against assignments and transfers, either in leases or in policies of insurance.*"

"In this case the *bankruptcy* of Wells, the owner of the policy and the property, was *involuntary*. By operation of the law, the policy and property were taken out of his custody and control, and placed in the hands of the assignee, as the agent of the law, to sell the same and pay his debts. The entire interest in the property is sold, under the law, by the assignee. The loss provided for in this policy accrued while the property was in this condition. It was still in law Wells' property, but by operation of law in the hands of the assignee, for the sole purpose of selling and of applying the proceeds for Wells' benefit."

**1083.** On the other hand, where the condition of the policy provided "that if the property shall be sold or transferred, or any change take place in the title or possession, whether by *legal process*, or *judicial decree*, or voluntary transfer or conveyance, without consent of the company, \* \* \* the policy shall be void." It was held by EMMONS, J., U. S. C. C., N. D. O., 1871, in the case of *Starkweather v. Cleveland Ins. Co.* above, "that the adjudication and assignment in bankruptcy changed the title to the property insured within the meaning of the terms of the policy, and was, for that reason, a breach of the contract, and the policy therefore void." This reverses the decision of the U. S. D. C., above (**1082**), and is in harmony with (**1085a**).

*Adams v. Rockingham Mut. Ins. Co.*, 29 Me. 292; *Perry v. Lorillard Ins. Co.*, 6 Lans. N.Y. 201, 4 Ins. Law Jour. 673.

**1084. Official Assignee.**—Where loss has been made payable to an official assignee, such loss may be recovered, notwithstanding that the fire shall have occurred after the appointment of a second assignee, and such appointment has not been officially communicated to the insurance company before the fire; and under the circumstances of this case, there was not any change either of ownership or possession." (*Q. B. Elliott v. National Ins. Co.*, 23 L. C. J. 12.)

*McQueen v. Phoenix Mut. Ins. Co.*, 4 S. C. R. 666; *McNichols v. Canada Guarantee Co.*, Quebec, Sup. Court, 1880; *Ross v. Angus*, S. C. Montreal.

## ALIENATION.

**1085. Condition of the policy.**—"Or, if the property be sold or transferred, or any change take place in title or possession, whether by legal process or judicial decree, or voluntary transfer or conveyance."

42 Ins. Law Jour. 812, 814, 828; 4 *id.* 676; 5 *id.* 549; *Savage v. Howard Ins. Co.*, 52 N. Y. R. 502; s. c. 43 How. Pr. 462; 44 *id.* 40; *Young v. Eagle F. I. Co.*, 14 Gray Mass. 150; 6 Ins. Law Jour. 764; *Angell Ins.* 258.

**1086. Alienation** applies particularly to an *absolute* conveyance of real property; hence, any transfer of real estate, short of the conveyance of title, is not *alienation* under the above-cited condition of the policy.

The meaning of the words, "sale," "alienation," or "transfer," in such a condition, is held to be confined to acts which absolutely divest the title of the insured.

Neither a mortgage nor levy of execution, without change of possession, is an alienation.

Washington F. I. Co. v. Kelly, 32 Md. 421; Phoenix Ins. Co. v. Lawrence, 4 Met. Ky. 9; Etna Ins. Co. v. Tyler, 16 Wend. N. Y. 385; Jackson v. Mass. Mut. Fire Ins. Co., 23 Pick Mass. 418; Gilbert v. N. Am. F. I. Co., 23 Wend. N. Y. 43.

**1087.** "All of the various expressions—sold or conveyed in whole or in part,—shall not be alienated by sale or otherwise,—the title shall not be changed or transferred,—are held to be in substance the same, and mean an act whereby a thing is made another man's; an act whereby a change in the ownership of property is made from one person to another; and whether the words are used in their active or passive senses can make no difference in their construction. These covenants are, that *he* will not assign the policy, or in any manner change his title to or ownership of the property insured."

2 Abbott U. S. 67; 4 Ins. Law Jour. 677; 32 N. Y. R. 405; 4 Biss. 511; 32 Md. 425.

**1088.** When, by the stipulation of the policy, it was "to be void if there should be any alienation or *change* in the title."

HELD: "That any *material change*, though not *alienation*, would have that effect."

Barnes v. Ins. Co., 51 Me. 110; 29 How. N. Y. 71; 24 id. Pr. 40; 52 N. Y. R. 502; 20 Vt. 546.

#### RECONVEYANCE.

**1089.** The effect of a conveyance is to terminate the insurance, and a *repurchase* cannot restore it.

HELD: That an *alienation* had occurred when the insured had given an *absolute* deed and taken back an agreement for reconveyance, and provided he should pay a certain sum in a given time.

3 Benn. F. I. Cases, 30, 35, 86; 2 id. 81; 1 Philips Ins. 63; 16 Ohio 148; 19 La. 105, 28; 11 Met. Mass. 429; 29 Me. 292; 30 id. 414.

**1090.** HELD: That a *conveyance absolute in form*, though given as a security for debt merely, avoids the policy; and this though only an un-

divided interest in the property is insured. But a merely nominal transfer as collateral security for debts which are subsisting liens upon the property will not avoid the policy.

2 Benn. F. I. Cases 74, 279; 2 Ins. Law Jour. 814; 4 *id.* 718; 5 *id.* 825; 1 Parsons Ins. 62 n.; 10 Mich. 279; 1 Selwyn N. Y. 151.

**1091.** HELD, on the other hand:—

"The sale of property, and taking back a *mortgage* to secure the purchase money, does not change the title within the meaning of a condition in a policy of insurance, that in case of 'any change of title' in the property, insured, the policy shall cease and determine."

Savage v. Howard F. I. Co., 52 N. Y. 503; a. c. 43 How Pr. 463; 41 *id.* 40; Dadmun Mfg. Co. v. Ins. Co., 11 Met. Mass. 429; Tomlinson v. Ins. Co., 47 Me. 232; 2 Benn. F. I. Cases 28; 11 Leigh. Va. 354; 1 Curtis C. C. 193.

**1092.** If insured property be sold before loss, the policy is void unless transferred with the property, by consent of the underwriters. (**1067.**) If sold in part only, the policy will hold good as to the portion unsold, unless expressly otherwise provided by the policy.

West Branch Ins. Co. v. Helfenstein, 40 Pa. St. 289; 16 Wend. N. Y. 385; 6 Ins. Law Jour. 742. Per Contra: Baldwin v. Hartford Ins. Co., S. C., N. H. 19 Cent. Law Jour. 394.

A lease is simply a change of possession, and is *not alienation*. (40 Pa. Sta. 289.)

**1093.** A *transfer* which lessens the interest of the insured in preventing destruction of the property will avoid it. (17 Iowa 176.)

PARTNERSHIP.

**1094.** Where change of title voids a policy by its stipulations, a division of partnership goods, before loss, each partner taking a portion, *is change of title and consequent alienation*.

**1095.** Where one of three partners, before a loss, sells his interest to the other two partners, without notice or consent the entire policy is void by reason of such transfer. (**1073. 1379**) for authorities.

**1096.** *Mortgage of property insured is not alienation, unless made so by the conditions of the policy. A mortgage and a foreclosure are both necessary to make a change of title.*

50 Me. 96; Conover v. Ins. Co., 3 Denio N. Y. 418, affirmed 1 Comst. N. Y. 290; 1 Phillips Ins. 62; 1 Comstock N. Y. 290; 38 N. H. 233; 8 Blackford Ind. 31; 9 How. Pr. N. Y. 501; 3 Duer N. Y. 254.

**1097.** *Transfer of insured property to an assignee, under a decree of bankruptcy, is alienation. But a policy is not voided by a compulsory sale on execution, if the insured retain the right of redemption. (1082.)*

1 Ins. Law Jour. 647, 673; 1 Edmond's Cases 210; 5 Post. N. H. 289; 20 Me. 292.

**1098.** Where, during the currency of a policy conditioned that, "If the property shall in any way be alienated the policy shall be void," a mortgage, known and consented to, was foreclosed, and the property sold.

Held: "That the title that became vested in the mortgagee by the foreclosure was brought about by the operation of the law; there was no act of conveyance or transfer by the mortgagor to the mortgagee. We cannot, therefore, regard the foreclosure and sale as an alienation." (1080, 1081.)

2 Abbott U. S. 67; 5 Foster N. H. 249; 3 Benn. F. I. Cases 469; 6 Cush. Mass. 342.

**1099.** When the underwriter has assumed the affirmative of the issue of *alienation* of insured property, the burden of proof is upon him. (13 Gray Mass. 430.)

**1100.** An agreement to sell, but where the deed is not made nor the purchase money paid, does not divest the insured of his interest in the property, so long as he remains in possession and the contract is not performed.

Davis v. Quincy Mut. F. I. Co., 10 Allen Mass. 113; Farmers Mut. Ins. Co. v. Graybill, 74 Penn. St. 17; Trumbull v. Portage Mut. Ins. Co., 12 Ohio 305; Washington Ins. Co. v. Hayes, 17 Ohio St. 432; 16 B. Monroe Ky. 242; 10 Cush. Mass. 350.

#### HEIRS AT LAW.

**1101.** Where, by the terms of the policy, the company agree "to make good unto the said assured, his executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by

fire to the property as above specified." It was HELD by the Supreme Court of New York, on appeal:—That "the death of the insured vests the title of real estate in the heirs at law, causing thereby such change of title as to render policies of insurance, containing the above stipulation, void as to such heirs." (*Lappin v. Charter Oak F. & M. Ins. Co.*, 58 Barb. N. Y. 325.)

6 Ins. Law Jour. 484, 497; 34 Md. 280; *Malters v. Thompson*, 51 Texas 7; *Hine v. Homestead Ins. Co.*, N. Y. Ch., 15 Ins. Law Jour. 71.

**1102.** A policy of insurance, which by its terms was payable to the heirs or assigns of the insured, is not a part of the estate of the deceased or liable for his debts, but the heirs will take by virtue of the contract and not by the law of inheritance. (*Malters v. Thompson*, 51 Texas 7.)

**1103.** Where property covered by a mutual fire insurance company is sold and conveyed by the insured, he is not liable to be assessed on his premium note for losses occurring after such sale and conveyance. (231.)

**1104.** *Descent of title to heirs*, as a general principle, is not alienation under the common law rule. But when the policy requires notice of such change to the heirs, to keep the insurance valid such notice must be given.

May Ins. 289; 4 Foster N. H. 550; 5 Ins. Law Jour. 239; 7 *id.* 520; 13 *id.* 71; *Angell Ins.* 261; *Marsh. Ins.* 696; *Burbank v. Rockingham Mut. Ins. Co.*, 24 N. H. (4 Fort.) 550; 3 Benn. F. l. Cases 369.

**1105.** *Sale by a Master in Chancery.* It is clear, both on principle and authority, that by the sale of the premises insured under the proceedings in the Orphans' Court, there was no such alienation *before confirmation* as avoided the policy; and the loss having occurred between the sale and the confirmation, the legal title was then in the heirs of Forney, and the action in the policy was rightly brought in the name of the administrator to the use of the vendee. (*Insurance Company v. Updegraff*, 9 Pa. Harris 518.)

*Reed v. Lukins*, 8 Wright Pa. 290; *Hill v. Cumberland Valley Mut. Protection Co.*, 9 P. F. Smith Pa. 474; 2 Ins. Law Jour. 828; *Mt. Vernon Mfg. Co. v. Summit Co. Mut. Ins. Co.*, 10 Ohio Sta. 347; *McLaren v. Hartford F. Ins. Co.*, 5 N. Y. R. 151, s. c. Ed. Cases 210; *Farmers' Mut. Ins. Co. v. Graybill*, 74 Pa. St. 17.

## INDORSEMENTS.

**1106.** "A contract varying the policy, or to cancel it, is as solemn an act as the contract of insurance itself, whether done by indorsement or by a separate instrument. Such changes in the policy have been customary in underwriting from the earliest days, and provisions were made for them in the various Continental "Ordonnances," which are to be found at length in Magins' Essays, vol. 2. 1 Arnould Ins. 50.

**1107.** Indorsements purport to be the written consent of the underwriter, whether indorsed upon the instrument itself or contained in a separate printed slip or "rider" (**170**), attached thereto and made a part thereof,—to any change of the original contract, by transfer of the contract, or of the subject covered therein, to other parties, or by removal of the property at risk, or of any change or alteration of the premises, or of any of the terms, conditions, or stipulations of the policy itself. (**958**.)

In France such indorsements are termed *avenants*, purporting to show that the contract has been amended, qualified or even canceled. (Emerigon 381.) To be valid this *avenant* must be signed by both parties.

1 Arnould Ins. 53; *Kaines v. Knightly*, Skinner 54.

**1108.** The effect of such consent is a simple agreement on the part of the underwriters, that the change thus indorsed shall not prejudice the insurance originally made, which shall remain in force, subject only to any modification resulting from the nature of such *indorsement*, which may be to waive some of the conditions previously existing, as when an *indorsement* written across the face of a policy, giving privilege for additional insurance, was held to be a waiver of forfeiture on account of such additional insurance.

**1109.** *Indorsements* may be made on a separate piece of paper, and pasted or wafered to the original contract as a "rider;" but, to be valid, it must be signed by the insurer, especially when such indorsement is made a condition pre-

cedent to the continued validity of the policy. And where the indorsement imposes new obligations to the prejudice of the insured, his signature will be as necessary to the validity of the new agreement. (963, 964, 965.)

**1109a.** No indorsement of any kind should ever be made upon a policy after a loss until the adjustment has been made and the claim settled. (1077.) Nor should indorsements be made upon renewal receipts; they should, when necessary, be entered upon the original policy; or, better still, a new policy embracing the proposed change should be made. (4 Benn. F. I. Cases 184.)

*Shutzer v. Mutual F. I. Co.*, 8 Ins. Law Jour. 72; *Courtney v. N. Y. City Ins. Co.*, S. O. N. Y., overruling *Dey v. Pokeysie Mut. Ins. Co.*, 4 Benn. F. I. Cases 181, 184.

## ALTERATION OF BUILDINGS.

### INCREASE OF RISK.

**1110.** *Conditions of the policy*: "If, during this insurance, the above-mentioned premises shall be used for any trade, business or vocation, or for storing, using, or vending therein any of the articles, goods, or merchandise denominated hazardous, or extra hazardous, or specially hazardous, in the memorandum of hazards printed on the back of this policy; or, if the occupation of such premises be changed from one of the class denominated extra hazardous or specially hazardous to that of another of the same class, except as herein specially agreed to in writing upon the policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, this policy shall cease and be of no force or effect." (38 N. H. 232, 3 Ins. Law Jour. 766.)

### ALTERATIONS OF OR ADDITIONS TO RISK.

**1111.** The insured may incur additional risk by alterations or additions, without prejudice to the insurance, provided a loss occasioned by such additional risk can be distinguished from one happening independently of it. But when it cannot be distinguished whether a loss has been occasioned by such additions or alterations, voluntarily made by the insured, the underwriters will not be liable under the policy.

Or, if any change be made in the subject, not incidental to the ordinary use of the property, so as to render it a different

one from that described in the policy, the underwriter will be wholly discharged from liability under the contract. (1129.)

1 *Philips Ins.* 351; *Jefferson Ins. Co. v. Cotheal*, 7 Wend. N. Y. 72; *Girard F. & M. Ins. Co. v. Stephenson*, 37 Penn. Sta. 293; *Curry v. Ins. Co.*, 10 Pick. Mass. 535; *Station v. Ins. Co.*, 4 Mass. R. 330; *Dorn v. German Ins. Co.*, U. S. C. C., N. D. Ohio, Jan., 1876; 19 Penn. St. 45; 58 *id.* 443; 1 *Wright Pa.* 298; 4 *id.* 311; Civil Code L. C., § 2485; *Liv. & Lond. & Globe Ins. Co. v. Wyld*, 1 S. C. R. 604; *Chapman v. Ins. Co.*, 13 L. C. J. 36; *Sovereign Ins. Co. v. Mohr*, 10 L. N. 79, 14 S. C. R. 612; *Mooney v. Imperial F. I. Co.*, M. L. R., 3 S. C. R. 339; *Peck v. Mut. Ins. Co.*, C. Q. B., Ont.; *Citizens Ins. Co. v. Rolland*, M. L. R., 4 Q. B. 362, C. R. 4 L. N. R. 140; *Kuntz v. Niag. Dist. F. I. Co.*, 28 U. C. P. 326; *Lomas v. British America Ins. Co.*, 22 U. C. Q. B. 316; 4 *Benn. F. I. Cases* 655; *Reid v. Gore Dist. Ins. Co.*, 11 U. C. Q. B. 345.

#### REQUISITE REPAIRS.

**1112.** Requisite repairs, such as come within the ordinary acts of ownership, may be made in and about the premises under insurance, where there are no express stipulations to the contrary in the policy. In most policies permission is given to make such repairs to the extent of fifteen days within the year.

2 *Ins. Law Jour.* 944; 4 *id.* 6, 7; 5 *id.* 3, 7, 9, 15; 8 *id.* 420; 15 *id.* 371; *Rann v. Home Ins.*, N. Y. C. Ap., Jan., 1875; 3 *Benn. F. I. Cases* 153; 3 N. Y. 122; 18 *id.* 168; 59 *id.* 387; *Ottawa Forwd. Co. v. Liv. & Lond. & Globe Ins. Co.*, 28 U. C. Q. B. 523.

**1113.** If a shingle roof be replaced by a metallic one, secured by soldering, which is a hazardous operation, and the building takes fire in consequence, the underwriter will be discharged unless permission for such increase of hazard be obtained from the insurer. (835, 1133.)

1 *Wis. R.* 20; *Grant v. Howard F. I. Co.*, 5 Hill N. Y. 10; *O'Neill v. Buffalo F. I. Co.*, 3 *Comstock* 122; *DeLoquemare v. Tradesmen's Ins. Co.*, 2 *Hall N. Y.* 589; *Lounsbury v. Protection Ins. Co.*, 8 *Conn.* 459; 1 *Benn. F. I. Cases* 687.

**1114.** If the alteration be of a permanent character and materially increases the risk, it is a breach of the contract. Where a small steam engine and boiler were put into the building for temporary use, it was held to vitiate the insurance.

*Glen v. Lewis*, 8 *Exch.* 607; 17 *Jur.* 842; 23 *L. J. Exch.* 228; 16 U. C. C. P. 573; 4 *Benn. F. I. Cases* 7; *N. W. Nat. Ins. Co. v. Davis*, S. C. Ky.; *Citizens Ins. Co. v. Rolland*, C. R., 4 L. N. 140.

The degree of alteration necessary to vitiate a policy has been generally left to the jury, unless it be a question of warranty, when the materiality becomes immaterial. The burden of proof in such cases is upon the underwriter. (4 Ins. Law Jour. 195.)

**1115.** An alteration whereby the character of the risk is not changed, nor the fire hazard increased, does not discharge the insurers from their responsibility; where no stipulation against such alteration exists in the policy, a material increase of the hazard must be shewn to avoid the policy. In such cases, not only the fact of the alteration or addition must be shown, but the further fact that the use and employment thereof followed, and that the risk was thereby increased. The fact of such increase of hazard is a question for the jury to decide under the conditions of the policy; the onus of proof of such materiality lies with the insurers.

Barrett v. Jeremy, 8 Weis., Hurl & Gord, Exch. 535; 1 Selden N. Y. 489; 3 Comstock N. Y. 122; 6 Ins. Law Jour. 479, 80. Alteration by accident: Brenner v. Liv. & Lond. & Globe, S. C. N. C. Oct. 8, 1875; Cond. Stat. U. C., c. 52, § 34.

If the underwriter desires to make it a condition-precident to the continuous validity of the policy that there shall be no alterations in the circumstances surrounding the risk at the time of the issue of the policy, he must do so in distinct terms; and when such alterations are thus expressly forbidden by the stipulations of the policy, even a casual infringement will not be permitted, and no question of materiality can arise.

**1116.** Policies stipulating that there shall be no change of or addition to the property at risk are subject to close scrutiny in cases of loss, where such changes or additions have been made; and, while the facts are submitted to the jury, the letter of the contract will be considered in connection with what may be *necessary additions* or changes.

#### CHANGE OF OCCUPANCY.

**1117.** To invalidate an insurance, change of occupancy of a building under insurance must be a permanent one.

A mere temporary exercise therein of a more hazardous trade or vocation will not, usually, invalidate the insurance in the absence of specific stipulations against such temporary occupation. (**1119.**)

1 Selden N. Y. 469; 12 Cush. Mass. 472; 8 Conn. 459; 26 Pa. Sta. 196; 2 Ins. Law Jour. 5; 4 *id.* 163; 15 *id.* 52; Flanders Ins. 232, 236, n.

**1117a.** A change in the nature of the occupancy does not point to a mere temporary cessor of the occupation, but rather to an application of the premises under insurance to a permanent purpose different from that described in the application.

17 Barb. N. Y. 111; 2 Hall N. Y. 589; 3 Const. N. Y. 589; 5 Hill N. Y. 10; 4 Ins. Law Jour. 164, 195; Leggett v. Aetna Ins. Co., 10 Rich. Law, S. C. 302; Krueitz v. Niagara Dist. Ins. Co., 16 U. C. C. P. 573; Chapman v. Lancashire Ins. Co., 13 L. C. J. 36.

The mere change of occupant, without other alteration in the manner or purpose of occupation, is not a change of occupancy under the condition of the policy relative to change of occupancy.

3 Gray Mass. 583; Hobson v. Western Dist. F. I. Co., 6 U. C. Q. B. 536; Gates v. Fire Ins. Co., 1 Seld. N. Y. 469; Gould v. Br. Am. Assur. Co., 27 U. C. Q. B. 436.

**1118.** The occupation of a building for any business purpose which may be auxiliary to and necessary for the business recognized in the policy as carried on therein will not invalidate the policy, even if among the hazards conditioned against by the policy. It will be a question of fact for the jury to decide whether the business was auxiliary to or necessary to that authorized.

4 Ohio St. 285; 5 *id.* 450; 8 Conn. 459; 2 Ins. Law Jour. 6; 4 *id.* 195.

#### UNAUTHORIZED USE.

**1119.** If the policy be conditioned to be made void by unauthorized use, the cause of the loss is immaterial; and the fact that it was carried on by a tenant, without consent of the landlord, the insured, or by a mortgagee, after assignment of the policy to the mortgagee, is no defence.

Sovereign Ins. Co. v. Moir, 10 L. N. 79, 14 S. C. R. 612; Flanders Ins. 256; Jennings v. Fire Ins. Co., 2 Denio N. Y. 75; Wall v. E. Riv. Ins. Co., 3 Seld. N. Y. 370; Lawless v. Ins. Co., cited Argell Ins. § 169, n. 2; Sun Fire Ins. Co. v. Texarkana Foundry & Machine Works Co., S. C. Texas; Harvey v. Mut. F. I. Co., Prescott, 11 U. C. C. P. 392.

**1120.** Under a policy covering goods of one tenant in a specified building, the enhancement of the risk of fire by the manner of occupancy in other respects does not discharge the underwriter, except upon the ground of express warranty, or implied representation in the application. (*Appleby v. Ins. Co.*, 45 Barb. N. Y. 454.)

**1121.** Where there are no express provisions in the policy to the contrary, unauthorized use of the property, after insurance, by which the hazard is increased, suspends the insurance during the continuance of such unauthorized use. (**1130.**) (3 Gray Mass. 583; 45 Barb. 454, *supra*.)

**1122.** As a general rule, where two buildings are covered by one policy, under stipulations applicable to both, an unauthorized use of one of them vitiates the insurance on both. (**946.**)

3 Ins. Law Jour. 894, 935; 6 *id.* 444, 446, 448; 6 Cush. Mass. 342; 3 Benn. F. L. Cases 131.

**1123.** Under a clause against increase of hazard after insurance, the insured made alterations and additions, and removed a furnace from the original building to the addition, without consent of the insurer. The jury found the external risk was increased, but the internal hazard was diminished, and on the whole the risk was diminished. *Held*: Plaintiff could not recover. (*Lomas v. British America Assur. Co.*, 22 U. C. Q. B. 318; *Heneker v. British America Assur. Co.*, 13 U. C. C. P. 99; *Date v. Gore Dist. Mut. Ins. Co.*, 15 U. C. C. P. 175; *Lindsay v. Niag. Dist. Ins. Co.*, 28 U. C. Q. B. 326; 16 U. C. C. P. 572.)

**1124.** Use means known and permitted use. "Use is the master of things." Habitual use will be presumed unless the insured takes measures to enforce the prohibition. (7 Ins. Law Jour. 220, 250, 303.)

#### VACANT AND UNOCCUPIED.

**1125.** *Condition of the policy.*—"Or if the above-mentioned premises shall be occupied to increase the risk, or become vacant or unoccupied, and so remain for more than thirty days without notice to and consent of his company in writing."

**1126.** Describing a building to be occupied as a "private residence" is not a stipulation that it shall be so occupied, and not be at all vacant during the currency of the policy; so that, if the insured and his family leave home for a week, locking up the house, and a fire occurs therein during the time, the policy will not be vitiated by such temporary absence.

Canada L. Co. v. Canada Ins. Co., 17 Grant Ch. 418; 4 Ins. Law Jour. 9, 619, 650, 658, 729, 896, 898; 5 *id.* 360; 6 *id.* 676, 735, 803; 7 *id.* 167, 220, 228; 9 *id.* 38, 65, 79; 3 Coms. N. Y. 122; Sumner C. C. 434; 12 Iowa 371; May Ins. 268, n. 2, 270; Flanders Ins. 257, n. *id.* 259; 4 Benn F. I. Cases 753; 11 Handy O. 208, 408; 12 Cush. Mass. 167; 45 Me. 168.

**1127.** Where the plaintiff made application for insurance upon his dwelling house and furniture therein, giving notice at the same time that the house would be unoccupied, as he was going to the United States to reside, but would leave a competent person in charge of the premises during his absence. The agent thereupon accepted the risk, and issued an interim receipt for the premium, upon which a policy was subsequently issued by the company, and in the absence of the plaintiff, sent to his nephew. The property subsequently burned; the company defended on the plea of non-occupancy. The trial court gave judgment in favor of the company. Upon appeal to the Superior Court, sitting in review at Quebec, this judgment was reversed, and defendant adjudged to pay the amount of the insurance. (*Ansell v. Agricultural Ins. Co. N. Y.*, Court Queen's Bench, Quebec, Appeal, 1889; *Same v. Hurly*, 17 R. L. 108; C. R., 14 Q. L. R. 183.)

**1128.** Where the policy covered a manufacturing establishment, to be void "if the building remained unoccupied over thirty days without notice and consent of the company." It was held in S. J. Court of Mass. (10 Allen 228) "not to be sufficient to constitute occupancy that the tools remained in the shop, and that the son of the insured went through the shop almost daily, to examine and see if all was right; but that some practical use must be made of it; and that if it remained thus without practical use for thirty days, it was "unoccupied" within the meaning of the condition, and the policy was voided thereby."

May Ins. case 270; Keith v. Quincy Mut. Ins. Co., 10 Allen Mass. 228; 6 Ins. Law Jour. 762; 7 *id.* 477; 15 *id.* 633; 8 W. Va. R. 605.

GENERAL.—Where non-occupation voids the policy: *Hartshorne v. Ins. Co.*, N. J. Court Error & App., June, 1888; *Royal Ins. Co. v. Lubolsky*, S. C. Ala. 1889; *Fishe v. Buffalo F. I. Co.*, 18 Ins. Law Jour. 319; *Niagara Fire Ins. Co. v. Doda*, 15 Ins. Law Jour. 874; *Farmers' Mut. Ins. Co. v. Wall*, S. C. O., Jan., 1885; *West Br. Ins. Co. v. Helfenstein*, 4 Wright Pa. 289; *Sleeper v. N. Hamp. Ins. Co.*, 6 Ins. Law Jour. 537; *Alexander v. Germania Ins. Co.*, 5 Ins. Law Jour. 360; *Walsh v. Hartford Ins. Co.*, 7 Ins. Law Jour. 423; *Wood v. Hardware Mfg. Co.*, 13 Conn. 544; 5 Bann. F. I. C. 367; *Caley v. Harper*, 86 Penn. St. 493; *Am. Ins. Co. v. Pailfield*, 73 Ill. 167; *McClure v. Watertown Ins. Co.*, 9 Ins. Law Jour. 209; *Dennison v. Phoenix Ins. Co.*, 9 Ins. Law Jour. 65.

Where non-occupancy does *not* void the policy: *O'Neill v. Buffalo Ins. Co.*, 3 N. Y. 122; *Carter v. Humboldt Ins. Co.*, 17 Iowa 426; *Prieger v. Exch. Mut. Ins. Co.*, 6 N. Y. 87; *Am. Fire Ins. Co. v. Foster*, S. C. Ill., Oct., 1879; *Shackleton v. Sun Fire Ins. Co.*, S. C. Mich., Nov., 1884; *Woodruff v. Imperial Ins. Co.*, N. Y. C. Ap. 1880; *Phoenix Ins. Co. v. Zucker*, 9 Ins. Law Jour. 193; *Homan v. Merch. Ins. Co.*, S. C. N. Y.; *Kelly v. Home Ins. Co.*, N. Y., U. S. C. C., Dist. Kansas; *Cannell v. Phoenix Ins. Co.*, 50 Me. 582; *O'Brien v. Comm. Ins. Co.*, 6 J. & Sp. N. Y. 517; *Hartford Ins. Co. v. Smith et al.*, 3 Col. R. 422; *Atlantic Ins. Co. v. Manning*, 3 Col. R. 224; *Western Ins. Co. v. Mason*, 5 Bradwell Ill. 141. Summer residence: *Franklin Ins. Co. v. Kepler*, S. C. Pa. 1880. Temporary stoppage of a saw mill: *Whitney v. Ins. Co.*, 9 Hun. N. Y. 39.

#### ADDITIONAL EXPOSURES.

*Condition of the policy.*—"Or the risk be increased by the erection of or occupation of neighbouring buildings, or by any means whatever within the control of the assured, without the assent of this company indorsed hereon . . . this insurance shall be void."

**1129.** Under the general provision that "if after insurance is effected the risk on the property shall be increased by any means *within the control of the insured*, such insurance shall be void, unless consented to by the company," it is held that the erection of a barn so near to the building under insurance as to enhance the risk would incur a forfeiture of the policy. (**1111.**)

*Barrett v. Jeremy*, 8 Wels., Hurl & Gord. Exch. R. 535; 3 Bann. F. I. Cases 93. and authorities *supra*.

#### SUSPENSION OF THE CONTRACT.

**1130.** Where a condition of the policy was, that if the premises should be appropriated to a prohibited use, without consent of the company indorsed on the policy, "then and thenceforth, so long as the same shall be appropriated, applied or used, these presents shall cease and be of no force and effect." (**1192.**)

HELD: "That the meaning of the condition was, if the house or premises shall be appropriated to any prohibited use, then, *so long as it is so appropriated*, the policy shall cease to bind the insurers." (*Etna Ins. Co. v. Myers*, S. C. Ind., Jan., 1878.)

## STORING AND KEEPING.

**1131.** *Condition of the policy.*—"If during this insurance the above-mentioned premises shall be used for any trade, business, or vocation, or for *storing*, using, or vending therein any articles, goods, or merchandise, denominated hazardous, or extra hazardous, or specially hazardous, in the second-class of hazards printed on the back of this policy, \* \* \* then and from thenceforth, so long as the same shall be so appropriated, applied, or used, this policy shall cease and be of no force or effect."

## STORING.

**1132.** Storing means the keeping for safe custody, to be delivered out in the same condition, substantially, as when received, and applies only to where storing or safe-keeping was the principal object of the deposit, and not where it was merely incidental.

To be *on storage*, articles must be in the building for the purpose of being *stored or kept*. The mere keeping of certain articles (deemed hazardous and extra hazardous, and prohibited by the policy), in quantities not unusually large, for the purpose of ordinary retail sales, is not *storing*, and does not invalidate the policy, unless its provisions specifically forbid the keeping of such articles for sale. (**1135.**)

3 Ins. Law Jour. 264, 288; 4 *id.* 413, 503; 7 *id.* 236; 1 Benn. F. L. Cases 193, 340, 348; 2 *id.* 140, 142, 147; 3 *id.* 973; 6 Wend. N. Y. 623, 628; 3 Harrison N. J. 48; 8 Conn. 459 Angell Ins. 192, 212, 226.

**1133.** Under the stipulations of a policy, "where no fire is kept and no hazardous goods deposited," a tar-barrel, which was hazardous, was introduced into the building, and from it the building caught fire. (**1113.**)

**HELD:** That the stipulations referred to the *habitual* use of fire, and the ordinary deposit of goods, and not to the *occasional* introduction of either.

6 Taunt. 436; 1 Holt, N. Pr. 126; 1 Wood & Maltby 90; Angell Ins. 222.

**1134.** At the time of the fire, the house was being repaired and painted, and "oil, turpentine, and paint" (prohibited articles by the policy) were in the building for that purpose.

**HELD:** "That the repairing of the insured house, and the deposit of the oil, turpentine and paint for that purpose, was not the trade of 'house repairing,' or 'storing' of the articles within the meaning of the condition of the policy." (3 Comstock N. Y. 122.)

**1135.** Where "oil, sulphur and matches" were mentioned in the policy as "hazardous" and "extra hazardous," and were kept upon the premises.

Held: That the policy was made void, and the fact that the property was insured "as a provision and grocery store" did not authorize the keeping of the excepted articles as a part of the stock appertaining to *such business*. (1140.)

**1136.** Among the classes of "*extra hazards*" were enumerated "oil, tallow and glass;" the policy was on "stock in trade, consisting of merchandise *not hazardous*." It appearing that "oil, tallow and glass" were kept with the stock insured, the policy was held to be void.

C. 299. Pa.; 4 Ins. Law Jour. 24; 30 Me. 273; 2 Allen Mass. 581; 3 Benn. F. I. Cases 76

**1137.** Placing gunpowder in a building, with a lighted match, for the purpose of blowing it up to prevent the spread of a conflagration, is not a *storing* of it within the meaning of the prohibitory clause against "storing gunpowder on the premises."

**1138.** A policy "on a *stock* of goods and merchandise contained in plaintiff's store" stipulated that the keeping of gunpowder for sale or on storage, upon or *in the premises* insured, should render the policy void. (1144.)

Held: That the word "premises" referred to buildings insured, and that gunpowder was not kept "upon or in the premises insured" within the meaning of the above prohibition. (4 Ins. Law Jour. 24.)

#### PROHIBITED ARTICLES.

**1139.** *Condition of the policy.*—"If the assured shall keep gunpowder, fire-works, nitro-glycerine, phosphorus, saltpetre, nitrate of soda, petroleum, naphtha, gasoline, benzine, benzole or benzine varnish, or keep or use camphene, spirit gas, or any burning fluid or chemical oils, without written permission in this policy, then, and in every such case, this policy shall be void."

**1140.** It has been held that a *reasonable quantity* of the *excepted article* may be kept, where it is properly *auxiliary* or usually belongs to the business or use of the building, expressly or impliedly permitted by the policy. (1118.)

2 Benn. F. I. Cases 140; 1 Hall N.Y. 226; 3 Ins. Law Jour. 850; 4 *id.* 21, 413, 457, 503; 15 *id.* 270; 5 Minn. 492. Per Contra: 7 Gray Mass. 257; 6 Wend. N. Y. 623; 3 Benn. F. I. Cases 76.

The enumeration of certain kinds of business or trades as *prohibited*, on the ground of being hazardous, is held to be an admission, that all other kinds are lawful under the contract.

*Langdon v. N. Y. Eq. Ins. Co.*, 1 Hall 226; 6 Wend. 633; 2 Johns. Cases 290; 13 B. Monroe Ky. 311.

**1141.** A condition not to use *camphene* prohibits its manufacture; and *not to keep it* includes its use for lights; yet where a building is insured as a printing-office, the prohibition of the use of camphene is held *not* to extend to its use for cleaning type.

*Harper v. Albany Ins. Co.*, 17 N. Y. 194; *Planders Ins.* (1st ed.) 78, 79; *Kruger v. West. F. & M. Ins. Co.*, S. C. Cal., 17 Ins. Law Jour. 54; *Stetiner v. Granite Ins. Co.*, 5 Duer. N.Y., 594; *Mead v. Northumberland Ins. Co.*, 3 Seld. N. Y. 530; *Westfal v. Hudson Riv. Ins. Co.*, 4 Kern. N. Y. 289; *Phoenix Ins. v. Taylor*, 5 Minn. 492; *Hall v. Ins. Co. N. Am.*, 3 Ins. Law Jour. 859. Per Contra: *Lancaster F. I. Co. v. Lenheim*, S. C. Pa.; *Macomber v. Ins. Co.*, 7 Gray Mass. 257; *Whitmarsh v. Ch. Oak. Ins. Co.*, 2 Allen Mass. 581.

**1142.** Where the conditions of the policy required permission to use camphene for lights to be indorsed on the policy, and an additional premium to be paid for its use; and camphene had been used for lights without such permission having been indorsed upon the policy, and without the payment of extra premium therefor.

HELD: That the use of it was prohibited, and that the policy was void.

*Lamotte v. Hud. Riv. Ins. Co.*, 17 N. Y. 199; *Farm. & Mech's Ins. Co. v. Simmons*, 30 Penn. St. 299.

## GUNPOWDER.

*Condition of the policy.*—"Whenever gunpowder, or any other article subject to legal restriction, shall be kept in said premises, in quantities greater than the law allows, or in a manner different from that prescribed by law, unless said use or keeping is specially provided for herein, this policy shall be null and void."

**1143.** A condition limiting the quantity of *gunpowder* to be allowed in a building has been held *not* to be an unreasonable one, although inserted in the policy of a dealer.

*Duncan v. Sun Fire Ins. Co.*, 6 Wend. N. Y. 488; *Faulkner v. Ins. Co.*, 1 Kerr N. B. 279; *McEwen v. Guthridge*, 13 Moore's P. C. Cases 304; *Protection Ins. Co. v. Harmer*, 2 Ohio St. 452; *Bowman v. Ins. Co.*, 27 Mo. 152; *Peoria F. & M. Ins. Co. v. Hall*, 12 Mich. 202.

**1144.** Where a steamship was protected against fire under a form of policy applicable to buildings and contents, in which the amount of gunpowder permitted to be kept *upon the premises* was limited to twenty pounds. The steamer was destroyed by fire, and the jury found that there was a package of one hundred pounds of powder on board as freight at the time of burning. It was contended that the term "premises" was used in the popular sense of "buildings," and could not be applied to a "ship"; that it was customary for vessels of this character to carry gunpowder as freight, and that the condition was inapplicable to the subject matter of the insurance. The condition was held valid and the policy voided.

Beacon F. & L. Ass. Co. v. Gibb. 1 Moore's P. C. Cases 9, 60, 73; 7 L. T. N. S. 574; 11 W. R. 194.

**1145.** Where the condition applied to the keeping of *gunpowder* on the premises. It was contended by the company that keeping gunpowder in the store, in *any quantity*, vacated the policy, while the assured insisted the policy is not defeated if they did not keep more than *one barrel* at a time. The clause of the policy out of which this difference in opinion arose is as follows:—

"Or if gunpowder, phosphorus, saltpetre, naphtha, benzine, benzine varnish, benzole, petroleum, or crude earth oils, are kept on the premises, or if camphene, burning fluid, refined coal or earth oils are kept for sale, stored, or used on the premises, in quantities exceeding *one barrel* at any one time, without written permission, or indorsed upon the policy, then and in every such case this policy shall be void."

It was held by the U. S. C. C. So. Dist. Miss., that (as punctuated) "it is manifest that no greater restriction can be applied to *gunpowder* and saltpetre than to camphene and burning-fluid, and that, therefore, the words 'in quantities exceeding one barrel at any one time' are applicable alike to all the materials which are specified in the clause in controversy."

Phoenix Ins. Co. v. Slaughter, 12 Wall. U. S. 494, 1 Ins. Law. Jour. 666.

#### NAPHTHA.

**1146.** A stipulation in the printed form provided that the policy should become void if *naphtha*, camphene, chemical oil, spirit gas, or gunpowder were used or kept on the premises insured. (Putnam v. Commonwealth Ins. Co., U. S. C. C., N.

D. N. Y., 4 Fed'l. Reporter 753; Mich. Cent. R. R. v. Ohio Valley Ins. Co., S. C. Cincinnati, O.)

**NAPHTHA CEMENT.**—At the time of the making of the policy and to the time of the fire, a cement, composed of *naphtha* saturated with gum shellac, was used for holding together the folds of the sheet of rubber wound upon a cylinder preparatory to cutting the sheet into thread. The can containing the cement sprung a leak, and the vapor therefrom, meeting the flame of a lamp, took fire, and the property was destroyed during the life of the policy. The insurers claimed that the use of *naphtha*, and its causing the fire, discharged them from any claim of the plaintiffs. By agreement of the parties, the only question on trial was the one involving the use of *naphtha* and its cause of the fire.

At the trial the plaintiffs introduced evidence tending to show that such use was necessary for the production of the finer qualities of thread, and that *naphtha* was in common and ordinary use in factories making other articles of rubber as well as thread, and therefore, that *naphtha* was a part of the "stock" insured. (53 Penn. St. 485.) The court charged the jury—

"As to the building, machinery, tools, apparatus, and furniture, being the first two subjects insured, the insurance company must be presumed to have known their use and adaptability to the manufacturing of rubber thread, and that the policy included and covered all such property, whether working rubber by the aid of *naphtha* or not; that, if the printed words regarding the use of *naphtha* stood alone and uncontrolled by any other provision of the policy, there had been such a breach of the contract that the plaintiffs could not recover. But the written terms of the policy were to have effect and, if opposed or contrary to the printed portion, that must yield and become of no force; that the policy gave to the plaintiffs the right and privilege of carrying on the business of a rubber-thread factory; and if the jury found that *naphtha* was, at the date of the policy, a necessary material, or one ordinarily used in the business of manufacturing the raw rubber into thread, and it was a general custom in establishments like the plaintiffs' to employ that material, and the plaintiffs used it for that purpose, then there had been no breach of the contract, even if the plaintiffs' factory was the only one in America using machinery requiring the use of *naphtha*."

#### SALTPETRE.

**1147.** Where, by the conditions of the policy of a *meat dealer*, the keeping of *saltpetre* was prohibited, a keg of *saltpetre*

was kept in the shop, and, on one occasion, a quantity of the *saltpetre* was sold to a customer. The proof further showed that it was customary for dealers in meat to use *saltpetre* in small quantities in their business. (1 Ins. Law Jour. 503; 2 *id.* 843.) The Supreme Court of Illinois **Held**:—

“That such customary use of the article implied a knowledge of the fact on the part of the underwriter; and that the mere fact of the use, or of keeping for use, in a reasonable quantity, would not vitiate the policy. But a keg of *saltpetre* was, under the proofs, more than a reasonable quantity; and whether dangerous or not, is immaterial—the fact of *selling* to a customer made the butcher a dealer in the article to such an extent as clearly to render the policy void under its terms; and, though the assured may keep articles necessary to carry on the business, though prohibited by the policy, it is not true that he may keep them for sale.

#### CAMPHENE.

**1148.** Where claim was made for loss under a policy, one of the conditions being “that *camphene* cannot be used in the building, unless by special permission in writing,” it was proven that *camphene* had been in the building, but had been removed before the fire. (2 Ins. Law Jour. 843, 851; 3 *id.* 850; 4 Benn. F. I. Cases 4.)

**Held**: “That the clause was a prohibition, forming part of the contract of insurance, and if invalidated, whether that affected the risk or not, the policy was voided; and it was immaterial whether the subject of the breach continued up to the time of the loss or not.”

**1149.** Where it was known to the agent of the underwriters, at the time the policy was effected, that the insured kept a prohibited article, and intended to keep it in the building insured, the keeping of it would *not* invalidate the policy, whether permission to so keep it was indorsed as instructed, or neglected to be indorsed. (**1309.**)

#### FIRE-WORKS.

**1150.** Where the policy provides that it “should be void if any articles subject to legal restrictions should be kept, unless specially consented to”—and a municipal ordinance forbids the keeping of certain kinds of *fire works*—such policy will not be

held to cover such *fire-works* as may be forbidden to be kept by the municipal laws. (2 Ins. Law Jour. 187.)

Where the insurance was upon the plaintiff's "stock of fancy goods and other articles in his business as a jobber and importer, with the privilege to keep *fire-crackers* on sale." The policy of insurance contained a clause providing that *fire-works*, among other things, should be specially written in the policy, otherwise they were not to be covered by the insurance. The loss arose from a fire which originated in the *fire-works* for sale in the store. It was not pretended that *fire-works* are included under the name of *fire-crackers*; but the plaintiff contended that they were included in the description, "other articles in his line of business." This evidence was rejected by the court below, and judgment given for the defendant.

Upon appeal the Supreme Court of U. S. (13 Wall, 183), CHASE, C. J., HELD:

"The policy itself requires that *fire-works* shall be specially written in it. They are among the goods described as specially hazardous, and add fifty cents on the hundred dollars to the ordinary rate of insurance. It is impossible to think they are described by the general terms used in the policy. The insurance was at the ordinary rates. There can be no doubt that the evidence was properly rejected; the judgment of the Circuit Court must therefore be affirmed."

Steinbeck v. Lafayette Ins. Co., N. Y. C. Ap., 2 Ins. Law Jour. 813 contra.

## WAIVER.

**1151.** *Condition of the policy.*—"The use of general terms, or anything less than a distinct, specific agreement, clearly expressed, and indorsed on this policy, shall not be construed as a waiver of any printed or written condition or restriction therein."

2 Ins. Law Jour. 619; 5 *id.* 384, 404, 563, 569, 781; Continental F. I. Co. v. Ruckman, S. C. Ill., 26 Chic. Leg. News 224; Pitney v. Glen Falls Ins. Co., 61 N. Y. 335; 18 Ins. Law Jour. 817; 16 *id.* 56; Stat. Cond. U. C., § 20.

**1152.** Waiver, in law, is the act of not insisting upon some right, claim or privilege secured, as in an insurance, by the conditions of the policy to the insurer. It is another name for an estoppel, which is the true ground upon which the doctrine of waiver in such cases rests. Such waiver must be the act of an officer or duly authorized agent of the company, and may be by

direct intention or by implication (**1163**) derived from the act of the insurer or his agent, or from a failure to act at the proper time. In either case it is final, and cannot be recalled. It can never arise by implication alone, except from some conduct which induced action by the insured in reliance upon it, to an extent that would render it a fraud to recede from what the party has been induced to expect. (**1158.**) Where such waiver distinctly appears, the reasonable rule of law is that the party will be estopped from insisting upon that which is inconsistent with what has been said or done that affects the rights of others. It is in such cases that the doctrine of estoppel *in pais* finds its just application.

2 Ins. Law Jour. 35, 289, 618; 4 *id.* 801; 5 *id.* 29, 92, 569; 6 *id.* 251; 8 *id.* 143, 905; 13 *id.* 54; *Viele v. Germania Ins. Co.*, 26 Iowa 9; *Reaper City Ins. Co. v. Sorey*, 62 Ill. 458; *Peshner v. Phoenix Ins. Co.*, 63 N. Y. 195; *Van Allen v. Ins. Co.*, 4 Hun. N. Y. 113; *Hotchkiss v. Germania Ins. Co.*, 5 Hun. N. Y. 90; *Storey v. Hope Ins. Co.*, S. C. La., 15 Ins. Law Jour. 19; *Wood Ins.*, 326, 371, 496; *Brady v. West. Assur. Co.*, 17 U. C. C. P. 597; *Jacobs v. Equitable F. I. Co.*, 17 U. C. Q. B. 35; *Smith v. Commercial Union Ins. Co.*, 33 U. C. Q. B. 69; *Mulvey v. Gore Dist. M. Ins. Co.*, 25 U. C. Q. B. 424; *Hutton v. Beacon Ins. Co.*, 18 U. C. Q. B. 317; *Scott v. Niagara Dist. M. F. I. Co.*, 25 U. C. Q. B. 119; *Thames Ins. Co. v. Royal M. S. P. Co.*, 13 C. B. N. S. 358; *Hawley v. Sheldon*, Har. Chy. Mich. 420; *Chitty Cont.* 6th ed. 73.

**1153.** Nothing, however, is a waiver of the rights of an insurer that would not, under the same circumstances, be enforced against others; and no act of the insurer can have the effect of a waiver on account of a breach of condition, unless it be shown to have been done with a full knowledge that a forfeiture by such breach of condition existed, and with a design to include it in such permission.

13 Ins. Ann. 375; 22 Conn. 505; 25 *id.* 267, 543; 18 Barb. N. Y. 541; *Angell Ins.* 343.

**1154.** A limitation or condition in a policy of insurance, intended for the benefit of the company, may be *waived* by it; and the fact of the *waiver* is a question for the jury.

Story Agency, 56, 62, § 125; 2 Ins. Law Jour. 31.

**1155.** A policy, being forfeited by violation of some of its conditions, a mere *oral waiver* of the forfeiture is not sufficient to revive it, unless some new consideration on the part of the

insured supervenes, or some act on the part of the insurer, or duly authorized agent, importing a *waiver*.

1 Ins. Law Jour. 603, and authorities cited; *id.* 416; 1 Phil. Ins. 8, § 10; Imperial F. I. Co. v. Dunham, S. C. Pa., June, 1878. Per Contra: 13 Conn. 194.

**1156.** It is not to be taken for granted that an expired policy would be revived in all cases where an existing one might be modified or allowed to be affected by new insurance elsewhere. (2 McMullen, So. C. 237; 1 Ins. Law Jour. 206.)

**1157.** The questions of *waiver*, and what amounts to a *waiver*, are questions of fact, and are for the jury to decide, under proper instructions from the court.

2 N. Hamp. 120, 163; 1 Conn. 79; 7 *id.* 45; 14 Wend. N. Y. 419; 1 Ohio 21; 1 Brown's Par. Cases, 289; 8 Pick. Mass. 292; 5 Ins. Law Jour. 736.

**1158.** Any acts, declarations, or course of dealing by the insurers, with knowledge of the facts constituting the *breach of a condition* in the policy, recognizing and treating the policy as still in force, and leading the insured to regard himself as still protected thereby, will amount to a *waiver* of the forfeiture, by reason of such *breach*, and prevent the insurers from setting up the same as a defense in a subsequent suit for loss. (1152.)

Webster v. Phoenix Ins. Co., 36 Wis. 67; Greenfield v. Mass. Mut. Life Ins. Co., 47 N. Y. 430; Boring v. Empire Mut. Life Ins. Co., 2 N. Y. S. C. 610; Hall v. People's Mut. Fire Ins. Co., 6 Gray Mass. 185; 7 *id.* 261.

**1159.** The forfeiture, by reason of a *known* misrepresentation or concealment, may be *waived* by the insurer by receiving a new premium, offering to rebuild under a clause authorizing that mode of payment, or by renewal of the policy. But it has been held that it was no *waiver* of a forfeiture, occurring after the date of the policy, to collect a premium note actually earned.

4 Ins. Law Jour. 776; Carroll v. Charter Oak Ins. Co., 40 Barb. N. Y. 292; Rathbone v. City Fire Ins. Co., 31 Conn. 194; Tibbets v. Ins. Co., 3 Allen Mass. 569; Sheldon v. Atlantic F. I. Co., 26 N. Y. 117; Kraetz v. Niagara Dist. M. F. I. Co., 16 U. C. C. P. 131. Per Contra: Gilbert v. N. Am. F. I. Co., 23 Wend. 43; Neely v. Fire Ins. Co., 7 Hill N. Y. 49; Meizenheimer v. Continental Fire Ins. Co., 5 J. & Sp. N. Y. 232; Elliott v. Lycoming Co. Ins. Co., 66 Pa. St. 22; Scott v. Niagara Dist. M. F. I. Co., 25 U. C. Q. B. 119; Mulvey v. G. & Dist. Mut. F. I. Co., 25 U. C. Q. B. 424.

**1160.** A duly authorized agent of the company may waive forfeitures, etc., the same as the company.

Universal F. I. Co. v. Weiss Bros., S. C. Pa.; Ill. F. I. Co. v. Stanton, 57 Ill. 354; 14 Ins. Law Jour. 708; Chapman v. Lancaster Ins. Co., 13 L. C. J. 491; West. Assur. Co. v. Atwell, 2 L. C. J. 181; Lampkin v. West. Assur. Co., 13 U. C. Q. B. 361; 3 U. C. L. J. 20.

**1161.** Agent cannot waive.

Rathbone v. City Fire Ins. Co., 31 Conn. 194; Peoria F. & M. Ins. Co. v. Hall, 12 Mich. 202; Lindsay v. Niag. Dist. M. I. Co., 28 U. C. Q. B. 326; Scott v. Same, 25 U. C. Q. B. 26, 117; Johnston v. Same, 13 U. C. C. P. 333; Lampkin v. West. Assur. Co., 13 U. C. Q. B. 237 (under seal).

**1162.** As a general rule, parol evidence of a *waiver* is held inadmissible.

Statutes of Canada, 27-28 Vic., ch. 38; Scott v. Niag. Dist. Mut. I. Co., 25 U. C. Q. B. 119, under seal; Lindsay v. Same, 28 U. C. Q. B. 326, under seal; 14 Gray Mass. 201, Per Contra; Storey v. Ins. Co., La. S. C. Feby., 1883; Viele v. Germania Ins. Co., 26 Iowa 9; Van Allen v. Ins. Co., 4 Hun. N. Y. 413; Wood Ins., §§ 368, 371, 496; Porter v. Arctic Ins. Co., 1 N. Y. S. C. 397; May Ins. 141, § 142, and authorities cited; *id.* 144, § 143.

#### IMPLIED WAIVER.

**1163.** An *implied waiver* is when the underwriter omits to make more explicit inquiry where, from facts already communicated, he is bound to infer the existence of other facts not disclosed. (**635.**)

Or, when he *waives* information by consenting to insurance in the form in which it is proposed, without further question.

Mer. & Manf. Ins. Co. v. Curran, 45 Mo. 512; Hall v. Ins. Co., 6 Gray Mass. 185; 7 *id.* 531; 12 *id.* 545; Nichols v. Fire Ins. Co., 1 Allen Mass. 63; Dayton Ins. Co. v. Kelly, 24 Ohio St. 345.

#### EXTRA HAZARDOUS OCCUPATION.

**1164.** Custom or proof that matters in question as to extra hazardous occupation forbidden by the terms of the policy being a necessary part of the business (**1139** et seq.) will not avail as a waiver of the conditions of the policy, or act as an estoppel.

Pittsburg Ins. Co. v. Frazer, S. C. Pa., 14 Ins. Law Jour. 512; Herman v. Adriatic Ins. Co., N. Y. C. A., 10 Ins. Law Jour. 743; Ins. Co. v. Leubeine, Pa. S. C., 89 Penn St. 497; Birmingham F. I. Co. v. Knaegher, S. C. Pa., 83 Penn. Sta. 64; Grace v. Am. Cent. Ins. Co., U. S. S. C. on appeal, 13 Ins. Law Jour. 127; Steinbach v. Relief Ins. Co., U. S. S. C., 5 Ins. Law Jour. 158; Lewis v. Phoenix Mut. Life Ins. Co., Sup. C. Error, Conn., 6 Ins. Law Jour. 820.

**1165.** Countersigning of the policy by the agent when requisite by the terms of the instrument may be waived; for authorities see (166).

**1166.** Non-payment of premium: Where insurers plead non-payment of premium as bar to recovery, and in a supplementary answer allege misrepresentation and concealment, plea of non-payment of premium is waived. (*Michael v. Mut. Ins. Co. of Nashville, Tenn.*, 10 La. An. 737.)

**1167.** Notice of intention to rebuild or repair damaged premises is a waiver of defense based upon misrepresentation by the assured in obtaining the policy, if the fact of such misrepresentation was known to the insurer when he gives such notice. (*Bersche v. Ins. Co.*, 31 Mo. 546.)

**1168.** Where the policy provided that the insurance should be void if "hazardous" articles should be stored in the building without consent of the company indorsed on the policy, and with consent of the agent the policy was transferred to cover in another building where hazardous articles were stored. *Held*: Such an agreement was a waiver of the stipulation requiring written indorsement of consent. (*Rathbone v. City Fire Ins. Co.*, 31 Conn. 194.)

**1169.** A general agent of a company sent a policy by mail to an applicant for insurance, with a statement that the premium charged was higher than usual, and saying: "Should you decline the policy please return; if you retain it, please send me the premium." *Held*: a waiver of the condition requiring prepayment of the premium. (*Sheldon v. Atlantic Ins. Co.*, 26 N. Y. 117.)

**1170.** The non-waiver clause of the policy (1151) refers to those conditions and provisions of the policy which enter into and form a part of the contract of insurance, and are essential to make it a binding contract between the parties, and which are properly designated as *conditions*, and not to those stipulations which are to be performed after a loss, such as giving notice and furnishing preliminary proofs. (*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102.) The object of the condition is

to prevent agents from waiving any of these conditions without a written indorsement to that effect upon the instrument itself. Being an integral part of the contract it becomes equally binding with the others.

*Pitney v. Glen Falls Ins. Co.*, 61 Barb. N. Y. 335; 5 Ins. Law Jour. 384, 404, 563, 563, 569, 651, 731; 6 *id.* 482; *Continental Ins. Co. v. Ruckman*, S. C. Ill., 26 Chicago Legal News 229.

**1171.** Where objections are made to claims under the policies of the company, on any point therein, the addition of the following will prevent a waiver of any *other* rights that may be subsequently discovered. "Reserving all objections to a recovery in any form, and *without intending to waive* any rights under the policy."

*Citizens Ins. Co. v. Doll*, 35 Md. 89; 3 Gill. Md. 176.

See also Waiver of CONCEALMENT (**635**).

- " LIMITATION CLAUSE (**1185** *et seq.*).
- " MAGISTRATE'S CERTIFICATE (**1938**).
- " NOTICE OF ADDITIONAL INSURANCE (**968** *et seq.*).
- " NOTICE OF LOSS (**1646** *et seq.*).
- " PAYMENT OF PREMIUM (**799**).
- " PRELIMINARY PROOFS (**1878** *et seq.*).
- " VOID OR VOIDABLE POLICIES (**1005**).
- " ALIENATION CLAUSE (**1085**).

## LIMITATION.

**1172.** *Condition of the policy.*—"It is furthermore hereby expressly provided and mutually agreed, that no suit or action against this company, for the recovery of any claim by virtue of this policy, shall be sustainable in any court of law or chancery, until after an award shall have been obtained, fixing the amount of such claim in the manner above provided, nor unless such suit or action shall be commenced within twelve months next after the loss shall occur; and should any suit or action be commenced against this company after the expiration of the aforesaid twelve months, the lapse of time shall be taken and deemed as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding."

2 Magins' Essays, § 1429. *Bilboa*; *id.* 195, "a year and a day;" *Weak. Ins.* 33; *Bacon's Abridgt.* 508; 29 Vic. c. 37, § 3; 39 Vic. c. 24, sched.; 40 Vic. c. 7, sched. A.; *Stat. Cond. Ont.*, § 22.

**1173.** This clause was introduced into the United States policies in 1836; as above cited, it is much more extended than any heretofore in use, and upon which most of the rulings in this

connection have been made. It also embraces an entirely new stipulation, viz.: "*until after an award shall have been obtained fixing the amount of such claim in the manner above provided.*" "In the manner above provided" is indefinite where so many provisions have been made. If it mean that the amount of the loss shall be first ascertained by an adjustment, as provided for by the conditions of the policy, the stipulation is lawful, and must be complied with. (1810.)

Duke of Beaufort v. Neald, Cl. & F. 248, 286; Jones v. Juberville, 2 Ves. jr. 11; 3 Benn. F. I. Cases 1; 4 Ins. Law Jour. 88, 799, 917; 5 *id.* 547, 858, 861; 7 *id.* 526; 8 *id.* 905; Upton v. Tribblecock, U. S. S. C., 5 Ins. Law Jour. 97; Cray v. Hartford Ins. Co., 1 Blatchf. C. C. U. S. 280; Fullam v. N. Y. Ins. Co., 7 Cray 61; Brown v. Roger Williams Ins. Co., 5 R. I. 394; 7 *id.* 301; Hickey v. Anchor Ins. Co., 18 U. C. Q. B. 433; Lampkin v. West. Assurance Co., 13 U. C. Q. B. 361; Tallman v. Fire Ins. Co., 27 U. C. Q. B. 100; Brady v. West Assur. Co., 17 U. C. C. P. 597; Brown v. Fire Ins. Co., 24 Ga. 97; 31 Conn. 518; 30 N. Y. 546; *id.* 136; 12 Mich. 202; 25 Ill. 466; May Ins. 567, § 464, 583 § 478.

**1174.** *Limitations* established by *statute* differ in their nature and effect from those agreed upon by *contract*. In cases of *limitations* by *statute*, the law imposes the disability; but, in cases of *limitation by agreement*, the terms of the contract impose the disability. Nor does the same evil consequently follow from removing the absolute bar of the *contract*, that would from removing absolutely the bar of the *statute*; for when the bar of the *contract* is removed, there still remains the bar of the *statute*, and though plaintiff may show, by his disability to sue, a sufficient answer to the time provided by the *contract*, he must still bring his suit within the reasonable time fixed by the *statute of limitations*.

**1175.** HELD, by the Supreme Court of Michigan:—

"That, if the condition was valid at all, it was valid as a contract only; and that the limit fixed by it must, upon the general principles governing contracts, be more flexible in its nature than one fixed by statute, and be liable to be defeated or extended by any act of the insurer which prevents action from being brought within the prescribed time." (Peoria F. & M. Ins. Co. v. Hall, 12 Mich. 202.)

**1176.** On the other hand, Justice FIELD, C. C. U. S. Dist. Mo., speaking of the conditions of *limitation* (7 Wall. 336), says:

"The contract of insurance is a voluntary one, and the insurers have a right to designate the terms upon which they will be responsible for losses."

He continues: "A stipulation in a policy to refer all disputes to *arbitration* stands upon a different footing: *That* is held invalid because it is an attempt to oust the courts of jurisdiction, by excluding the assured from all resort to them for his remedy.

"*This* is a very different matter from prescribing a period within which such resort shall be had. The condition of the policy in this case does not interfere with the authority of the courts; it simply exacts promptitude on the part of the assured in the prosecution of his legal remedies, in case loss is sustained, respecting which a controversy arises between the parties." And he further adds: "We have no doubt of its validity."

**1177.** HELD also in Massachusetts, Rhode Island, Connecticut, New York, Georgia, Pennsylvania, and Iowa: "That such condition was valid and binding upon the insured, and operates as an effectual bar everywhere."

*Gray v. Hartford Fire Ins. Co.*, 1 Blatchf. U. S. C. C. 280; 30 N. Y. 136, 546; 43 N. H. 621; 31 Conn. 378; and authorities cited *supra*.

**1178.** Where the policy stipulates, "that all claims under this policy are barred unless *prosecuted* within one year *from date of loss*:"—HELD, in Texas:—

"That such a condition in a policy of insurance is not against public policy, nor is it merged in the general limitation laws of the state." And that "the failure to bring the action within a year *from the date of the loss* is an effectual bar to all actions on the policy." HELD also: "That the word *prosecuted* is equivalent to suit or action." (*Merch'ts. Mut. Ins. Co. v. Lacroix*, 35 Texas 239.)

**1179.** Where the policy contained a provision that the amount of loss shall be paid sixty days *after due notice and proofs shall have been made* by the assured, and received at the office of the company; also a provision that no suit or action shall be sustained unless commenced within six months next *after the loss shall occur*. The court say:—

"The question is whether the twelve months *commence to run from the day of the fire*, or at the *termination of the sixty days when the loss becomes payable*. In the *Mayor of New York v. Hamilton Insurance Company* (39 N. Y., 10 Bos. 45), the conclusion is reached that it was the intention, as is the fair construction of the policy, that the twelve months limitation *should commence to run at the expiration of sixty days* after the notice and proofs of loss were received at the defendant's office—twelve months after the *cause of action accrued*."

*Killins v. Putnam Fire Ins. Co.*, 28 Wis. 427; *Ketchum v. Ins. Co.*, 1 Allen N. B. 136; 6 Ins. Law Jour. 425, § 26; 1 *id.* 811; 4 *id.* 116; *Stout v. City F. I. Co.*, New Haven, 12 Iowa 371; 19 Iowa 364; *Longhurst v. Fire Ins. Co.*, U. S. D. C., N. D. Iowa, Oct., 1861; *Elias v. Ins. Co.*, 3 Iowa, 19 Cent. Law Jour. 377; *Levy v. Ins. Co.*, U. S. C. C. D. La., 9 Ins. Law Jour. 113.

**1179a.** On the other hand, where the conditions of the policy were the same as those last above cited (**1179**), the Supreme Court of Illinois, June, 1868, ask :

"When did the loss occur? Manifestly at the time the fire destroyed the property. In what consisted the loss? Obviously the destruction of the building by fire. We are wholly unable to conceive that language could have been used that could have rendered the meaning plainer. \* \* \* It is, however insisted that the clause in the policy, that the loss was to be paid sixty days after due notice and proof of the same should be made by the assured and received at the office of the company, limits and curtails the after-inserted condition prohibiting the bringing an action more than twelve months after the loss should occur. We are unable to perceive that it controls this condition. If either has that effect it would seem that the latter controls the former. The two clauses, considered together, obviously provide that the company shall have sixty days within which to make payment after notice and proof of loss; but in no event should a suit or action be commenced after the expiration of twelve months from the date of the fire producing the loss. Any other meaning attached to the language, it seems to us, would be strained, unreasonable, and in direct violation of the plain intention of the parties clearly expressed."

*Johnson v. Humboldt Ins. Co.*, S. C. Ill. 12, Ill. 513, 8 Ins. Law Jour. 617; *Upton v. Tribblecock*, U. S. S. C., 5 Ins. Law Jour. 97; *Mercantile Ins. Co. v. Lacroix*, 25 Tex. 249; *Carraway v. Ins. Co.*, 26 La. An. 298; *Quinn v. Capital Ins. Co.*, S. C. Iowa, 16 Ins. Law Jour. 980.

**1180.** Where a by-law of the company requires suit to be brought within a specified time and *in a particular county*;

HELD: Binding as to the time, but invalid as to the locality where suit was to be brought.

*Amesbury v. F. I. Co.*, 6 Gray Mass. 596; *Nute v. Ins. Co.*, 6 Gray Mass. 174.

**1181.** An agreement in a policy of insurance executed by a foreign company (of another state), that the insured waives the right to bring an action upon the policy except in the courts of the state incorporating such company, is void, both as against public policy and the statute of the State (Missouri) relating to foreign insurance companies. (*Richard v. Manhattan Life Ins. Co.*, 31 Mo. 518.)

**1182.** Regulations exist in some states, that where a first suit is abated, and a second suit is brought within the prescribed time, the statute of limitations shall cease to run from the date of the first suit.

*Riddlesburger v. Hartford Ins. Co.*, 7 Wall. U. S. 366; *McFarland v. Aetna Ins. Co.*, 6 W. Va. 437; *Wilson v. Aetna Ins. Co.*, 29 Vt. 99; *O'Laughlin v. Central Life Ins. Co.*, U. S. C. C., E. D. Mo., Mar., 1882; 78 N. Y. 460.

**1183.** In Louisiana the Code provides that "if the plaintiff, after having made his demand, abandons or discontinues it, the interruption shall be considered as having never happened."

*Riddlesburger v. Hartford Ins. Co.*, 7 Wall. U. S. 386; *O'Langdlin v. Union Central Life Ins. Co.*, U. S. C. C., Dist. Mo., Mar., 1882; *Arthur v. Homestead Ins. Co.*, 78 N. Y. 460.

**1184.** The State of Indiana provides by law that "No condition or agreement not to sue for a period less than three years shall be valid." Hence the ordinary limitation clause in the following cases was declared invalid: (*Eagle Ins. Co. v. Ins. Co.*, 9 Ind. 440; *French v. Ins. Co.*, 5 McLean C. C., U. S. 461.)

In Maine, the law makes limitations less than two years invalid.

See *Brown v. Roger Williams Ins. Co.*, 7 R. I. 301, as to the right of States to import into contracts qualifying terms, which the companies have not seen fit to adopt.

#### WAIVER.

**1185.** Here the authorities are at issue also; some rulings of the courts deciding that there can be no *waiver* of this condition; others, that it may be waived—the weight of the authority being with the latter, however. (**1151.**)

**1186.** HELD, in Canada and New Brunswick :—

"That it could not be *waived*. Lapse of time extinguished the liability of the insurers, which could not be revived by *waiver*; but they might dispense with the condition by a 'deed.'Ketchum v. Ins. Co., 1 Allen N. B. 136.)

**1187.** HELD also: "That a cause of action under this condition cannot be revived by acknowledgment or a new promise." (*Lampkin v. West. Assur. Co.*, 13 U. C. Q. B. 237.)

**1188.** HELD, in Pennsylvania :—

"That the stipulation was binding and proof of *waiver* must be positive." (*Schroeder v. Ins. Co.*, 2 Philad. Pa. 236.)

**1189.** HELD, in Illinois :—

"That the condition was valid and reasonable, though there might be a *waiver* by the conduct of the company." (*Peoria F. & M. Ins. Co. v. Whitehall*, 25 Ill. 466.)

**1190. HELD, in New York :—**

That "the condition is to be strictly construed. That slight evidence of *waiver*, as in other cases of forfeiture, will be sufficient to defeat its application. "A positive act of the company, intended to induce postponement," is not necessary. The court, especially to aid a forfeiture, and a very harsh one too, will not scrutinize very closely the verdict of a jury on such a point; nor the rulings of the judge at the trial, unless very clearly erroneous."

Ridley v. *Etna Ins. Co.*, 29 Barb. N. Y. 553; 30 *id.* 136; 5 *Ins. Law Jour.* 88.

**1190a.** The policy provided that no suit should be sustained unless brought within six months after the loss. *Held*, "the jury were properly instructed that if the insured delayed bringing suit until after the expiration of six months, in consequence of inducements held out by the company's officers, causing him to believe that the loss would be paid without suit, that would operate to remove the bar created by the condition of the policy."

Ripley v. *Astor Ins. Co.*, 17 How. Pr. 444; Grant v. *Lex. Ins. Co.*, 5 Ind. 23, 2 *Ins. Law Jour.* 16; Ames v. *Ins. Co.*, 14 N. Y. 253; Mickey v. *Ins. Co.*, 35 Iowa 174; Black v. *Ins. Co.*, 38 Wis. 472; Mann, Receiver v. Meyer, S. C. Ill., Sept., 1879.

## UNDER RE-INSURANCE.

**1191.** Where loss occurred in November, 1854, and was paid by the original insurers, August 9, 1855, who brought suit against the re-insurers, August 8, 1856.

*Held*: That the loss or damage referred to in the re-insurance policy was the injury to the property, and not the payment of the loss by the original insurers, and that the action was too late. (*Provincial Ins. Co. v. Etna Ins. Co.*, 16 U. C. Q. B. 135.)

## SUSPENSION OF CONTRACT.

**1192.** A state of war suspends all contracts in existence between citizens of the respective belligerents at the time the war commences, and all contracts made through its existence are void. As the doctrine is expressed by English jurists, there cannot exist at the same time a war for arms and a peace for commerce, the principle being that the belligerent condition places every individual of the respective governments, as well as the government themselves, in a state of hostility.

*Held*: That this doctrine applies to our late civil war. That, upon the termination of the war, the remedy upon obligations contracted before the war is revived, from and after the date of such termination; and all suits

must be brought within the time limited by the policy, exclusive of the whole period of disability, or the insured cannot recover.

Mut. Ben. Life Ins. Co. v. Hillyard *et al.*, N. J. E. & A., 4 Ins. Law Jour. 127; 15 Barbour N. Y. 413.

**1193.** HELD, by the U. S. S. C., MILLER, J. :—

"Where an action was brought on an insurance policy which contained a clause that no action should be maintained unless brought within twelve months *after the loss occurred*—that the period of twelve months which the contract allowed the plaintiff for bringing his suit does not open and expand itself so as to receive within it three or four years of legality created by the war, and then close together at each end of that period so as to complete itself as though the war had never occurred."

"That the time of limitation by *statute* may be so computed, but there the law imposes the limitation, and the law imposes the disability; but in this case the defendant imposed its own special and hard provisions on that subject. \* \* \* And the court has no right, as in the case of a *statute*, to construe it into a number of days equal to twelve months, to be made up to the days in a period of five years, in which the plaintiff could lawfully have commenced his suit."

"We have no doubt that the disability to sue imposed on plaintiff by the war relieves him from the consequences of failure to bring suit within twelve months after the loss, *because it rendered a compliance with that condition impossible*, and removes the presumption which the contract says shall be conclusive against the validity of the plaintiff's claim. That part of the contract, therefore, presents no bar to plaintiff's right to recover." (Sommes v. Ins. Co., 13 Wall. U. S. 158; Earnshaw v. Sun Mut. Aid Soc., Md. C. App. 1888.)

**1194.** Justice CLIFFORD, U. S. C. C. La. qualifies the foregoing somewhat; he says :—

"Where a debt has not been confiscated during the war, the rule is now universally acknowledged that the right to sue revives when peace is restored," etc., and as above.

**1195.** HELD further, by STRONG, J., U. S. C. C. Va. :—

"That the statute requires all of the time to be deducted during which the suit could not be prosecuted, by reason of resistance to the laws or interruptions of judicial proceedings, whether such time was before or after the passage of the act."

**1196.** HELD further, by BRADLEY, J., U. S. C. C. Tenn. :—

"That if a party *voluntarily* leaves his country or his residence for the purpose of engaging in hostilities against the former, he cannot be permitted to complain of legal proceedings against him as an absentee, on the ground of inability to return or to hold communication with the place where the proceedings are commenced. It is different where a person is *driven* out by a military order, and not permitted to return."

### "HELD IN TRUST."

**1197.** *Condition of the policy.*—"In case of loss on property held in trust or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth, together with their respective interests therein."

**1198.** **HELD:** That the right of the insurer to limit the extent of his risk by such a condition is indisputable, and, unless goods "held in trust" or "on commission" are so declared when the insurance is taken, the policy would be void.

Turner v. Stitts, 28 Ala. 420; Waters v. Monarch Ins. Co., 5 Ell. & B. 870; Home Ins. Co. v. Favorite, 46 Ill. 263; 5 Benn. F. I. Cases 193; Home Ins. Co. v. Balto Warehouse Co., 93 U. S. 527; 6 Ins. Law Jour. 39; Wood Fire Ins. § 73; 10 Ins. Law Jour. 547; Suer v. Morris, 13 Penn. St. 218; London R. W. Co. v. Glynn, 1 Ell. & Ell. 652; Lee v. Howard Ins. Co., 11 Cush. Mass. 324; Balto. F. I. Co. v. Honey, 20 Md. 20; 17 L. C. J. 281.

**1199.** The condition of the policy is held to include everything covered by the policy in which the insured has only a *qualified interest, with possession*, the remainder of the ownership being in other parties—whether under a deed of trust, or under the appointment of a court of law, or held as a collateral security, or in materials held for others to be manufactured. In some policies the term is explained and qualified as follows:—

"By 'property held in trust' is intended property held under a deed of trust, or under the appointment of a court of law, or property held as collateral security; in which latter case this company shall be liable only to the extent of the interest of the assured in such property."

**HELD, in Illinois:** That the term "*trust*" in the condition of the policy is not used in that connection in any technical sense, but applies to ordinary bailments.

4 Benn. F. I. Cases 49, 344, 725; 5 id. 173; Story Agy. § 2 111, 115; Aetna v. Jackson, 16 B. Monroe Ky. 242; Phoenix Ins. v. Favorite, 49 Ill. 259; Hough v. People's Ins. Co., 36 Md. 398, 2 Ins. Law Jour. 353.

A "dry trust" of legal title of another, would not prevent recovery. (9 Ins. Law Jour. 598.)

**1200.** Goods described in a policy as "merchandise held in trust" by warehousemen, are goods intrusted to them for keeping. The phrase "held in trust" is to be understood in its mercantile sense. Justice OAKLEY holds the word "*goods held in trust*" or "*on commission*" to be equivalent to the clause

"for whom it may concern," as they contain a distinct declaration that the insured are acting for the benefit of their consignors.

DeForest v. Fulton F. I. Co., 1 Hall N. Y. 84; Park v. Ins. Co., 5 Pick. Mass. 34; Millaudon v. Atlantic Ins. Co., 8 La. An. 557; Turner v. Stitts, 28 Ala. 420; Home Ins. Co. v. Balto. W. H. Co., 93 U. S. 527, 6 Ins. Law Jour. 39; Washington F. & M. v. Kelsey, 32 Md. 421.

**1201.** Holding property in *secret trust*, to defraud creditors of the real owner, held not to be such *holding in trust* as was contemplated by the condition of the policy. (Ayles v. Hartford Ins. Co., S. C. Iowa, 17 Iowa 76, 4 Benn. F. I. Cases 776.)

**1202.** Where wool was delivered to a manufacturer to be manufactured, and on payment therefor it was to be his—he in the meantime to insure it for the benefit of the owner—which he did in his own name. A loss occurring, on suit by an attaching creditor, it was held that the manufacturer held the property as trustee for the owner.

**1203.** Where a manufacturing clothier insured "goods his own or held by him in trust," and on occurrence of loss, claim was made for his "own goods" only, they being of greater value than the amount of the insurance; an owner of "trust goods" claimed a portion of the insurance money from the insured, though he was ignorant of the existence of the insurance until after the claim had been made by the insured for the loss:—

HELD: That, "under the circumstances, the insured alone was entitled to the insurance money; and that his election to claim only for the loss of his own goods, was equivalent to an election to cancel so much of the policy as purported to insure 'goods held in trust,' which he was at liberty to do."

Martineau v. Kitching, L. R. 7 Q. B. 436; Stillwell v. Staples, 19 N. Y. 401, reversing 6 Duer N. Y. 63, upon this point; 1 Parsons. Ins. 51; Reitenbach v. Johnson, S. J. C. Mass., 15 Am. Law Rev. 1880.

**1204.** When the identical thing delivered is to be returned, though in an altered form, the contract is one of bailment, and the title to the property is not changed; but when there is no obligation to restore the specific articles, and the receiver is at liberty to return another thing of equal value, he becomes a debtor to make the return, and the title to the property is

changed,—it is a sale. (*Watkins v. Douraud*, 1 Port. Ala. 251; *Angell Ins.* 136.)

Story, *Bail.* § 430; *Todd v. Ins. Co.*, 18 U. C. C. P. 192; 5 Benn. F. I. Cases 267; *Jones Bail.* 64, 65.

**1204a.** Where *Johnson & Co.*, commission merchants, took out insurance upon all their stock, including that of *Campbell & Co.*, for the benefit of their consignors; but owing to the failure of many of the companies in which the insurance was taken, but sixty per cent. was realized by *Johnson & Co.* From this they deducted their advances for their consignors, and paid on the balance to *Campbell & Co.*, who brought suit for the entire value of the goods, claiming that *Johnson & Co.* were insurers. The S. C. held:—

"The consignees (*Johnson & Co.*) were not personally the insurers; their promise to insure was fulfilled by maintaining insurance. They were not required to take insurance in the name of the consignor, or to place the policy in his hands. The insurance upon the goods did not restrict the benefit of the insurance to the proprietary interest of the consignees, but operated to the benefit of all concerned. If the company is solvent at the time of insurance, its subsequent bankruptcy does not impose any additional burden on the consignee. The consignee having made advances on the goods consigned were creditors of the consignors, and had the same lien on the insurance money that they would have had upon the goods themselves." *Campbell & Co. v. Johnson*, 8 J. C. Mass. 62 Mass.; Citing, *Martineau v. Kitching*, L. R. 7 Q. B. 436; *Stillwell v. Staples*, 19 N. Y. 401; *Reitenbach v. Same*; *May Ins.* 527, n. 1.

### "GOODS SOLD BUT NOT DELIVERED,"

#### OR "NOT REMOVED."

**1205.** *Condition of the policy* (printed).—"When property has been sold and delivered, or otherwise disposed of, so that all interest or liability on the part of the assured herein named has ceased, this insurance on such property shall immediately terminate."

**1206.** *Condition of the policy* (written).—"Property his own; or held in trust; or on commission; or sold but not delivered (or 'sold but not removed'), commonly known as 'the Usual commission clause.'" (717.)

*Siter v. Morris*, 13 Penn. St. 218; 3 Benn. F. I. Cases 117; *Part et al. v. Ins. Co.*, 5 Pick Mass. 34; 1 Benn. F. I. Cases 184; *Brichta v. N. Y. LaFayette Ins. Co.*, 2 Hall N. Y. 372; 1 Benn. F. I. Cases 284; *DeForest v. Fulton Ins. Co.*, 1 Hall N. Y. 84; *Ætna Ins. v. Jackson*, 16 B. Monroe Ky. 243; *Wood Fire Ins.* 548, § 323; *Kronk v. Ins. Co.*, 91 Penn. St. 300; 9 Ins. Law Jour. 26; 10 *id.* 556; *N. British & Merc. Ins. Co. v. Moffatt*, 7 L. R. C. P. 25; 41 L. C. P. 1; 25 L. T. N. S. 662; 20 W. R. 114; *Lancashire Ins. Co. v. Chapman*, 7 L. R. 47; 13 L. C. J. 36; Privy Council case, not reported.

**1207.** The *first* of the above-cited conditions is found among the printed stipulations of the policy, and is eminently sound and practical for the purpose for which it was intended—that is, to restrict the liability of the underwriter to such loss and damage as the property of the policy-holder only may sustain; and, when not countervailed by any subsequent *written* indorsement, its effect will be direct and decisive, as intended.

**1208.** The *second* condition is a *written* stipulation, generally known as the “*usual commission clause*.” It is extensively introduced into the body of mercantile policies, its effect being to enlarge the scope of the policy and extend the liability of the underwriter into the regions of the unknown, by transferring insurance from the policy-holder—who is transformed into a trustee for others under his own policy—to whomsoever may chance to be the owner of the property at the time the loss may occur (**1223**), and its introduction, in its present form, into the body of the policy, most effectually nullifies and controls the effect of the restrictive condition first above cited. (**1221, 1221a.**)

**1209.** With a view to further illustrate this subject, and to enable the adjuster, in case of loss, to arrive at a correct judgment as to ownership under contracts of sale, we append the following general principles governing

#### CONTRACTS OF SALE.

**1209a. Statute of Frauds :** No contract of sale of goods exceeding a limited value, varying in the several states from \$25 to \$50, is valid and enforceable between the parties, unless the buyer actually receives some portion of the goods, or gives something to bind the bargain as earnest, or in part payment; or unless a memorandum, in writing, of the bargain be made, signed by the party to be charged therewith. If the price agreed upon be less than the amount limited by the Statute of Frauds, the sale is completed when the terms offered by the vendor have been accepted by the vendee. (4 Ins. Law Jour. 781.)

To effect a legal sale within the Statute of Frauds, there should be, *First*: A bargain intended to change the right of property, agreed to by both parties. *Second*: A *delivery* of the property by the vendor, and possession thereof by the vendee. *Third*: An acceptance and receipt of the property, with an actual possession of all, or some portion of the goods as absolute owner, by the purchaser.

## DELIVERY OF GOODS.

**1210.** Under contracts of sale, where, by their terms, nothing more is to be done by the vendor, the title passes to the vendee, and the right to payment of the price is perfect in the vendor, and he may retain possession of the property until payment is made. The *delivery* must be the act in which both vendor and vendee concur.

*Andrews v. Durant*, 11 N. Y. 35; *Ward v. Shaw*, 7 Wend. N. Y. 404; *Fitch v. Touch*, 15 Wend. N. Y. 231; *Clark v. Tucker*, 2 Sandf. 157; *Gray v. Davis*, 10 N. Y. 285; *Stanton v. Small*, 3 Sandf. N. Y. 239; *People v. Hawes*, 14 Wend. N. Y. 546.

*Delivery* may be of *three* kinds: ACTUAL, CONDITIONAL, and CONSTRUCTIVE OR SYMBOLICAL.

## 1. ACTUAL DELIVERY.

**1211.** *Actual delivery* consists in passing over the property to the possession and custody of the vendee; or in passing a bill and receiving payment therefor, either in cash or by a promissory note, draft, or bill of exchange, or by charging the same as a simple book-debt, when such has been the custom between the parties, though the property may not be removed at the time of the consummation of the contract; or by any act of the vendor whereby the title to the property is in the purchaser, so that he *may* immediately remove it. (See authorities last above cited.)

**1212.** But where there remains something yet to be done to the property by the vendor before delivery, as weighing, counting, measuring, marking or otherwise separating the property sold from other similar property, so that it can be identi-

*fied*, the title does not pass from the vendor; and if, after the contract of sale, and before such thing or things remaining to be done are done, the property be injured or destroyed by fire, the loss falls upon the vendor. It is only after such acts, necessary to be done, are done, and a delivery, *actual* or *constructive*, is made that the title passes to the purchaser.

7 Wend. N. Y. 405; 15 *id.* 221; 61 Barb. 335, *infra* (1213, 1214).

**1213.** Where a party contracted for the purchase of a lot of cord-wood, before it was all cut—the wood to be measured and delivered by the choppers when they had finished chopping:—

**HELD:** "That the measurement was requisite to the passing of the title; and that, until such measurement, the wood was subject to seizure and sale under execution against the vendor." (Home Ins. Co. v. Heck, 65 Ill. 111.)

Pitney v. Glens Falls Ins. Co., 61 Barb. N. Y. 335; Schindler v. Houston, 1 N. Y. 261; Orguerre v. Luling, 1 Hilton N. Y. 383; 4 Ins. Law Jour. 91, 727; Crofoot v. Bennett, 2 N. Y. 298; Kimberly v. Patchin, 19 N. Y. 330, 335.

**1214.** Where an article or articles sold are perfectly identified and paid for, a simple stipulation to deliver them at a particular place does not prevent the title from passing to the purchaser; and, in case of loss prior to such specified delivery, the loss would be the purchaser's, unless such delivery was made a condition of the purchase. (Adam v. Richards, 2 H. Bl. 573; Logan v. Mesurier, 6 Moore's P. C. C. 114.)

Sands v. Taylor, 5 Johns. N. Y. 395; 2 Kent. Comm. 498, 499; 4 Barn. & C. 481, 491; 1 Bouv. Inst. 939; Terry v. Wheeler, 25 N. Y. 520, 525.

## 2. CONDITIONAL DELIVERY.

**1215.** *Conditional delivery* is when, by the contract of sale, certain terms or conditions must be first complied with before the *title* will pass, as where upon the sale of an article upon credit, the condition was that the title shall not pass until the price is paid by the purchaser. (682.)

Brower v. Peabody, 13 N. Y. 121; Spaulding v. Brewster, 50 Barb. N. Y. 143; Hennequin v. Sands, 25 Wend. N. Y. 640; 15 N. Y. R. 409; 1 Philips Ins. 113, § 189, and authorities cited, n. 2.

**1216.** Or, if the sale be made for a promissory note or acceptance, payable on time, to be furnished in a given time

the purchaser, in the meantime, being permitted to take the property; if such note or acceptance be not furnished as agreed, the vendor does not lose the title to the property, the delivery being conditional only.

*Pitney v. Glens Falls Ins. Co.*, 4 Ins. Law Jour., 727, and authorities cited.

**1217.** *The risk attends upon the title*, and not upon the possession where no specific agreement upon the subject exists. It is an old maxim: "*Ejus est periculum cujus est dominium aut commodum.*" (His is the risk in whom is the ownership or profit.) So also with "*goods in transitu.*" (**683.**)

*Story Contr.* § 516; *Corlies v. Gardner*, 2 Hall N. Y. 345; *Terry v. Wheeler*, 25 N. Y. 520, 525; *De Foncleare v. Shottenkirk*, 3 Johns N. Y. 173. As to "stoppage in transitu," see *Covell v. Hitchcock*, 23 Wend. 611; *Edwards v. Brewer*, 3 Mees. & Wel. 375; *Dillard & Co. v. Paton*, S. C., Memphis, Tenn.

### 3. CONSTRUCTIVE DELIVERY.

**1218.** *Constructive or symbolical delivery* is where the title is in the purchaser, but the property, or some part of it, remains in the custody of the vendor after the consummation of the contract. Such delivery may be perfected by passing the key of the room containing the goods to the purchaser; or by marking timber on a wharf; or by the act of separating, weighing, measuring, or counting and setting apart the property so purchased; or by a delivery of a part for the whole; or by passing a warrant or warehouse receipt or order upon a warehouseman or in any other way whereby the control, without the custody of the property, is passed.

*Damon v. Osborn*, 1 Pick. 176; *Olyphant v. Baker*, 5 Denio N. Y. 379; 2 B. & L. Law Dict., title "Symbolical Delivery."

**1219.** From the legal construction of the contract of sale, by which the act of *delivery* is to be decided, it is evident that the phrase "not delivered," in the "usual commission clause," is one of those contradictory ones, like "*fixtures*" (which, in a policy, mean "movables"), and can only mean "goods not taken out of the keeping of the vendor," or in other words, "not removed," for they are *delivered* the moment the title passes. *A test of ownership would be the liability of the vendor to replace the lost goods, without insurance*

**1220.** Under the general (*printed*) condition of the policy when standing alone and unaffected by any subsequent *written* stipulation, upon the *sale* and *delivery*, *actual* or *constructive*, of insured property, and the consequent *cessation of the vendor's interest therein*, all liability of the insurers thereon ceases immediately, as the risk will follow the title unless otherwise specifically agreed.

#### CONTINUOUS LIABILITY AFTER SALE.

**1221.** But if "all interest or *liability* on the part of the assured herein named has *not* ceased"—a contingency recognized by the wording of the condition—if there be any *continuance of personal liability* of the insured, connected with the *sale* and *delivery* of the goods, such as an "*agreement to still stand insurer in respect to certain risks, for a certain period, under his then subsisting policy, this will constitute a sufficient still subsisting interest under such policy*, and the insurers will be liable."

1 Phillips Ins. 112, § 188; Reed v. Cole, 2 Burr. 1512; Firemen's Ins. Co. v. Powell, 13 B. Monroe Ky. 311; 2 Duer Ins. 56, § 5; Parsons Contr. 367; 1 Parsons Ins. 302; May 577, n. 1, 2, 3, and authorities cited *infra*. (1224.)

**1222.** Or, if there be a well-established *usage* in any particular trade, as in the purchase and sale of flour, in the city of New York, where a courtesy of *seven days* is allowed.

**1223.** Or, as in the city of London, where, by the usual public sale conditions, it is provided that the merchandise sold will be considered at the risk of the sellers until the prompt-day (day of settlement), or delivery of the warrant (order on the warehousemen), or day of payment (twenty-one days allowed [21]), whichever may first happen. In both or either of these last-cited cases, the policy would be liable under the law of *usage*, as *continued liability* for the customary days of courtesy. (1221.)

Martineau v. Ketching, L. R., 7 Q. B. 436; Bunyon, Ins., 1st ed., 148; 7 Wend N. Y. 405; 15 id. 221; 61 Barb. N. Y. 335

**1224.** Under the customary clause, covering "*goods sold but not delivered*" (or, *not removed*; for, in so far as the liability of the insurers is concerned, they are identical under this clause), this *continuing liability* is recognized and covered specifically as such, without qualification or limit as to ownership, amount, or time, other than the extent and duration of the policy; and, whether the original purchasers of goods thus "sold and not delivered," or "not removed," be one or a score, so long as such goods remain in the custody of the insured, they will be under the protection of his policy, within its amount and duration, though in the meantime such original purchase may have changed owners a dozen times, more or less, without notice to the insurers, the original vendor, the insured, holding possession in the nature of a *trustee for whomsoever may be proven to be the owner of such goods at the time of the loss, thus virtually changing the insurance from the owner to the goods.* (1226a, 1237.)

2 Duer Ins. 50, 54; 1 Philips Ins. 60, § 89; Powles v. Innes, 11 Mees & Wel. Exch. 10; Reed v. Cole, 3 Burr. 1512; National Ins. v. Crane, 16 d. 260; Bell v. West. M. & F. Ins. Co., 5 Rob. La. 423; Home Ins. Co. v. Balto. W. H. Co., U. S. S. C., 3 Otto 90.

**1225.** Furthermore, this clause, being a *written one* in the policy, will override and supersede ALL *printed conditions*, such as the stipulation heading this article—that is, as to *alienation*, and that as to "*goods held in trust*, being specifically insured," or any other, antagonistic to it, as it is a rule in the construction of the insurance contract that:—

"Words superadded *in writing* are entitled to have a greater effect attributed to them than the *printed words*, and may supersede them, inasmuch as the *written words* are the immediate language and terms selected by the parties themselves, for the expression of their meaning, and are necessarily inserted from design; the *printed words* may not express the intention of the parties; the *written* certainly do." (200.)

The general principle of law is:—

1st. If the insured sells agreeing to stand *trustee* of the subject for the vendee he will hold the policy as such *trustee*. And, 2d. Where the vendor retains possession of the policy, an action for the recovery of the loss can only be brought in his name, and the moneys recovered belong to the vendee; *nor can the underwriter set up the transfer of the property as a defense.*

2 Ins. Law Jour. 63; May Ins. 184; Wood Ins. 143, and authorities *Supra*. 1221.

**1226.** The distinction between the phrases "goods sold and *not delivered*," and "goods sold and *not removed*," is simply the difference between an executed and an executory contract of sale. The latter refers to a fully executed sale, where the title has passed from the vendor, and carrying the *actual* delivery (1211), or where the custody, but not the title, remains in the vendor as gratuitous bailee; while the former phrase is much more restricted, showing that the contract is yet executory, or incomplete, both title and custody remaining in the vendor. (1226a.)

Story on Sales, § 331; *Williamson v. Barry*, 8 How. U. S. 544; 2 Kent Comm. 368; 1 Ins. Law Jour. 614; *Atkins on Sales* 5; *Wood Ins.*, § 323.

(1226a.) Where, by the terms of the policy, the risk was to cover oil designated as "their own," as "held in trust," as "held on commission," and as "*sold but not removed*." The oil was sold, payment made, and sufficient papers delivered to the vendees to constitute a complete delivery of the oil. By the terms of sale and custom of the trade, the oil remained in the warehouse without expense to the vendees, and in possession of the vendors, and while there was destroyed by fire:—

Held: "A policy of insurance is legal when so framed that the insurance *shall be inseparably attached to the property meant to be covered, so that successive owners, during the continuance of the risk, shall be the parties really insured.* (1237.)" \* \* \* Phrases describing property as "held in trust," "on commission," and kindred terms, are held as giving to the owner the right to take the place of the insured and enforce the contract." (*Waring v. Indemnity Ins. Co.*, 45 N. Y. 606.)

1 Ins. Law Jour. 674; 2 *id.* 769; May Ins. 527, and authorities cited; 2 Duer Ins. 49; 1 *Parsons Ins.* 302.

**1226b.** Under this ruling the policy follows the goods specified, and loss, if any, becomes payable to "*whom it may concern*," at the time of the loss, as in the marine branch. (1237.)

*Turner v. Barrows*, 3 Wend. N. Y. 144; *Burgher v. Columb. Ins. Co.*, 17 Barb. N. Y. 274; *Newson v. Douglass*, 7 H. & J. M. 417; *Wood Fire Ins.*, § 2 & 127, 250, 282, 529; *Blodgett Law of Fire Ins. Contract* 48 n.

**1227.** The following action had by the NEW YORK BOARD OF FIRE UNDERWRITERS, upon the subject of "*goods sold but not delivered*," and subsequently adopted by the NATIONAL BOARD OF FIRE UNDERWRITERS, sets forth the difficulty, but fails to point out the remedy:—

1. "*Resolved*, That mercantile policies as printed and ordinarily filled up, to wit: '*On merchandise—their own or held by them in trust, or on commission, or sold but not delivered*,' are intended to protect, and do fully protect, the interest of *owners*, commission merchants and factors, who have advanced on said merchandise, to the entire value of the goods they have in charge, not exceeding the amount insured thereon."

2. "*Resolved*, That when the party or parties insured have sold and delivered merchandise, and their *responsibility for the preservation of the same has ceased*, they cannot, in such case, take the required oath of interest in the merchandise, and consequently have no claim for any loss thereon under the policies of insurance."

3. "*Resolved*, That the requirement in policies, that the consent of companies in writing must be obtained before the interest can pass to cover a party not originally insured, is of sound practical value; and that it is *dangerous* to use *written words* in policies which might be construed into a waiver of well-considered and important printed conditions."

4. "*Resolved*, That claims for loss on merchandise sold, where it is truly set forth in the '*proofs of loss*,' that in the sale note or contract of sale, there was in writing the following words (or others to the same effect): '*Deliverable, at the option of the buyer, at any time within—days* or, if an order on the warehouse has been given, and such order was made to read, '*Delivered to A. B. & Co. (the purchasers) at any time within—days*' (or words to that effect), insurance companies will recognize the assured in the policy named as the owner of the goods within and up to the time of such limitation, provided the number of days is fixed at the time of sale, and then *written in the contract or order*; and provided further, that the buyer shall not have presented his order and had the said merchandise placed to his or other account in the warehouse or store. (21, 1223.)

These resolutions suggest the following criticisms as to the effect of the clause "*sold but not delivered*":—

**1228.** The *first* resolution is simply a truism, as far as the interest of *owners*, commission merchants, and factors are concerned; but it ignores the *continued liability* of the merchant *vendor* (1221), which is also covered by the *usual commission clause*, as quoted, as long as he may elect, under the limitations of the policy as to time, and always will be, so long as these words form a part of the contract. (1226a.)

**1229.** The *second* resolution is another truism, and loses sight of the fact that the *liability* of the vendor for the preservation of the property from loss or damage by fire *may not have ceased after the sale* and constructive delivery; and, in case of loss under the *usual commission clause* (**1206**), the insured *vendor* does not have to make oath to any *interest* in the property, beyond the fact that the goods were "*sold but not delivered*," and that they were so covered in his policy.

**1230.** The *third* resolution is another truism; but unfortunately, the consent of the underwriter *was obtained in advance*, when the policy was issued containing that clause.

**1231.** The *fourth* resolution seems unnecessary, unless the clause referred to is omitted from the policy; for, as it now stands, it gives unlimited control to the *vendor*, which, of course, embraces all of the limitations of this resolution; all that is needed to be set forth in the proofs will be the fact that such property was held and covered by the policy under the clause "*sold but not delivered*."

**1232.** If the *usual commission clause* were stricken from the policy entirely, and the substance of the *fourth* resolution above, properly worded, inserted instead, the insured would get full indemnity for himself and reasonable protection for his customers; while the underwriter would be fully cognizant of the extent of the liability he has assumed, which he cannot be under this clause as it now stands.

**1232a.** "*For which he may be responsible.*" This phrase is sometimes found attached to the common commission clause, especially among the British offices' policies. Where this phrase is found in the policy it must clearly appear in the claim for loss or damage that the insured is liable therefor either by special agreement or under the law as a common carrier, or some classes of bailees. If the owner have insurance upon the same property as that covered under this clause it will not make double insurance under the policy condition. (Wood Fire Ins. 795; *id.*, §§ 476, 477.)

## WHOM IT MAY CONCERN.

## AND OTHER "GENERAL WORDS."

**1233.** There are several phrases, or, as technically designated, "*general words*," used in policies of insurance, and intended to apply to *all persons* not specifically named, who have an *insurable interest* at the time of effecting the insurance, and who were *then contemplated by the party ordering or effecting the insurance*.

2 Duer Ins. 29; Emerigon Ins. 262; Angell Ins. 134; 1 Arnould Ins. 25, § 19; 1 Parsons Ins. 49; 2 Valin's Comm. 33; 1 Phillips Ins. 197, §§ 382, 383; *id.* 200, § 385; Flanders Ins., 1st. ed., 376.

**1234.** One of the following, or some similar phrase, must be inserted in a policy, to give any one but the party named as the insured any rights under the policy.

*First.* The London policy form, where the insurance is expressed to be "in the name of A. B. (party effecting the insurance), as well in his own name as for and in the name and names of all and every other person or persons to whom the same (the property covered) doth, may, or shall appertain, in part or in all."

*Second.* "For account of whom it may concern," or "for whom it concerns."

*Third.* "On account of person or persons to be hereafter named."

*Fourth.* "To the Bearer" (used in Hamburg policies).

*Fifth.* "On account of the owners."

*Sixth.* "On account of whom it may concern *at the time of the loss*."

1 Phillips Ins. 201, § 384, 385; *Seamans v. Loring*, 1 Mason C. C. 128; 1 Duer Ins. 49; 1 Arnould Ins. 25, § 19; 2 Valin's Comm. 34, 36; 1 Parsons Ins. 47; *Finney v. New Bedford Ins. Co.*, 8 Metc. Mass. 348.

**1235.** The general words "*for whom it may concern*" is the form most generally in use in this country, and is coextensive in its possible application with the more lengthy English form above cited. It is understood to mean, not every person who may have an interest in the thing insured, but such only as are in the contemplation of the parties making the contract. It supposes an agency, and looks only to the principal on whose behalf or on whose account such agent acts; and he for whose benefit the insurance is procured is he alone "*whom it concerns*."

When there is no evidence to limit the application of the "*general words*" of the policy, they must be understood in their natural and proper extent of meaning.

1 *Philips Ins.* 109; *Lambeth v. West. F. I. Co.*, 4 Rob. La. 235; 11 *id.* 86; *Cobb v. N. E. Ins. Co.*, 6 Gray Mass. 192; 12 *id.* 540; *Sanders v. Ins. Co.*, 44 N. H. 238.

**1236.** The general words "*on account of the owners*" have been held to be only descriptive of the persons intended to be insured; and while they might include all concerned in interest, yet such is not its necessary construction; it may be applied to the separate property of each as well as to the joint property of all the owners. Such policies are open to explanation by extrinsic evidence.

To render a contract payable "*to bearer*" valid, as a contract of indemnity, it is necessary to prove that "*the bearer*" is not merely the holder of the policy, but that he had an interest at the time of the loss in the property covered by it.

*Gallet v. Pacific Ins. Co.*, 1 Paine C. C. 594; 1 Wend. N. Y. 561; s. c. 54 *id.*

**1237.** Mr. DUER says:—"By the use of either of the general terms '*to the bearer, or on account of whom it may concern at the time of the loss,*' or '*on account of the owners,*' a policy may be so framed that the insurance shall be inseparably attached to the property intended to be covered, so that successive owners shall, during the continuance of the risk, become in turn the parties really insured." (1221, 1226.)

2 *Duer Ins.* 50; *Savage v. Ins. Co.*, N. Y. C. A., 2 *Ins. Law Jour.* 768.

Under these provisions the policy is assignable with the subject, without consent of the underwriters being indorsed thereon. (1226b.)

**1238.** None of these "*general words*" are common in fire policies, except "*for whom it may concern*;" they more legitimately belong to marine insurance.

*DeForest v. Fulton Ins. Co.*, 1 Hall N. Y. 112; *Alliance Mar. Ins. Co. v. La. State Ins. Co.*, 8 La. 11.

**1239.** When a policy is procured by the insured for their own protection, and in respect to the property in which they claim an ownership, they may, nevertheless, recover thereon, though it be expressed to be "*for account of whom it may concern.*"

**1240.** A policy made in the name of a particular person "*for whom it may concern*," or with any other equivalent clause, will be applied to the interest of the party or parties *only for whom it is intended* by the person who effects or orders it, if such party or parties shall have authorized its being made beforehand, or shall subsequently adopt it, even after a loss may have occurred, and, in marine insurance, even after a loss is known to him. (720, 721.) *But he only for whom the contract was intended can become a party to it by its adoption.*

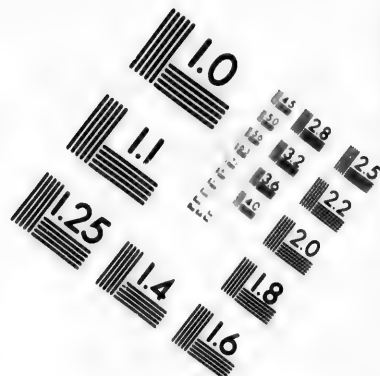
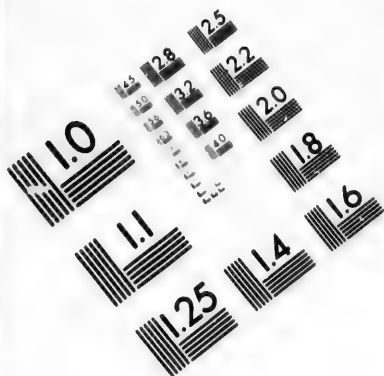
Angell Ins. 134; 1 Phillips Ins. *supra*; Hughes Ins. 41; 1 Arnould Ins. 25, § 19; Turner v. Barrows, 8 Wend. N.Y. 144; Flanders Fire Ins. 378, n. 1.

**1241.** When the policy expresses the insurance to be made by the person named therein, "*for himself and whom it may concern*," the words in their literal interpretation imply a joint interest, yet a recovery may be had on an averment of a separate and exclusive interest in any one of the parties for whom the insurance was intended.

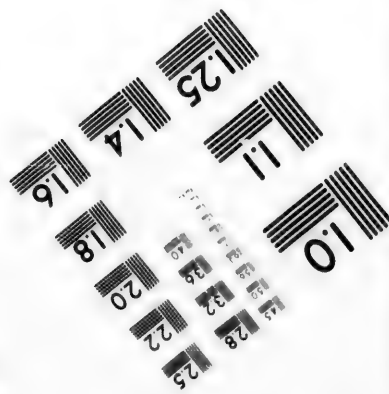
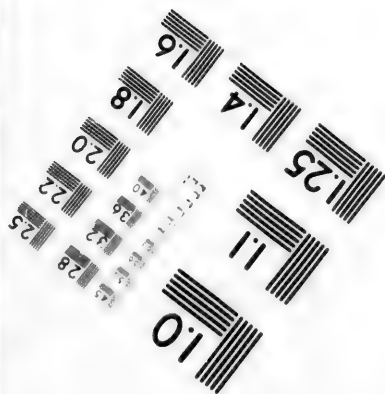
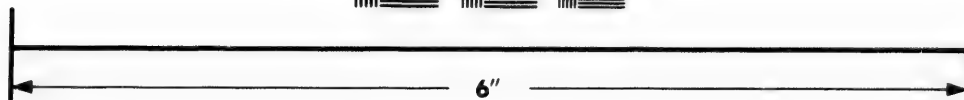
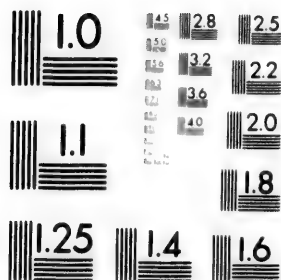
The *intention* of the party ordering the policy determines who are the "*concerned*" under a general description, though those included are not known to the insurers to be so.

**1242.** HELD: That an insurance by "*general words*," is not only to be limited to those who have an insurable interest in the property, and may be legally insured; the terms, however broad and comprehensive, must also be restricted to those for whom the insurance *was in fact intended*, and by whom it was previously directed or authorized, or subsequently in due season adopted. All other persons, though they may equally fall within the description in the policy, are not parties, *but strangers to the contract*. See authorities. (1235.)

**1243.** The rule that an insurance "*for whom it may concern*" will avail in behalf of the party for whom it was intended, does not mean that any specific person must be intended; it is enough that the agent and the underwriter *intend* it for any party or parties who have an insurable interest in the subject. If the insurance be *ordered*, then its application is governed by the *intent* of the party originally giving the order; if it is not ordered, its application will be to the interest of the party *intended* by the one affecting it, whether for him-



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self or another. But he may intend it for whatsoever party shall prove to have an insurable interest in the specified subject, in which case it will be applicable to the interest of any person *subsequently* ascertained to have such an interest, who adopts the insurance.

**1244.** "As a general rule of law, where the interest of the party claiming is proved, and authority from him to insure, or his adoption of the contract is also proved, it is an inference of law, from the terms of the policy, that the insurance was effected on his account; but if it be proven that his interest *was not intended* to be covered, its necessary legal effect is to exclude him from all privity in the contract."

**1245.** A party expecting a remittance of specie, *on his own account*, effected an insurance thereon in his own name and in the name of "*all persons concerned*," but with the *intention* of covering only his own property. There was a total loss, and he received from the underwriters the amount of specie *shipped on his account*, which was much less than the sum insured. An action was brought by other parties who had shipped specie on board of the same vessel, and whose interest, *had such been the intention of the insurer*, would have been protected by his policy, under which they sought to recover the amount of their loss, which was within the sum covered by the policy:—

HELD: That as these parties had *not* requested any insurance to be made on their account, and the policy effected *was not intended* to cover their interests, they had no claim under it.

**1246.** If the nominal insured be described in the policy as *agent* generally, without specifying for whom, it may be shown whose interest was intended to be insured in the same manner as if the policy had contained the general words "*for whom it may concern*."

*C. Russell v. N. E. Mar. Ins. Co.*, 4 Mass. 821; *Davis v. Boardman*, 12 Ma. 38. 86; *Hubbert v. Martin*, 1 Camp. 538; *Gibson v. Winter*, 5 Bar. & Ad. 96.

**1247.** Where there are divers persons answering the description of the insured, the policy is applied to the interest of the party for whom it was *intended*, or by whose order it was effected. (*Church v. Hubbard*, 2 Cranch, 187.)

**1248.** HELD: Where one, without order or authority, effects insurance, intended partly or wholly for another, in a form available to him, and applicable to his interest, such other has an election to be a party to such policy or to decline it. But he will become a party thereto *after notice*, and, as such, liable for the premium unless he declines to be so without unnecessary delay. (720), and authorities there cited.

**1249.** HELD, also: Before one can recover upon a policy of insurance containing "*general words*," he must show that *his property was intended to be protected by the policy*; or, that he caused the insurance to be effected for his benefit; or, that *it was intended, at the time it was taken*, for his security.

**1250.** In the absence of positive proof of adoption, the fact cannot be assumed.

**1251.** The burden of proving that *his* property was intended to be protected by the policy, rests upon him who asserts it. Either party may prove for whom the policy was intended.

#### MISCELLANEOUS CONSTRUCTIONS.

**1252.** Any word or expression will ordinarily be liberally construed as including whatever may be necessary to fill up its fullest and most perfect meaning. But only those things which by necessary implication belong to the principal subject, or are included in its description, are covered by the policy, under the maxim that "*general words are restricted by particular recitals.*" (191, 1140.)

United States v. Amedy, 11 Wheaton U. S. 392; Ins. Cos. v. Wright, 1 Wall. U. S. 456; Pitt v. Lansing, 4 Camp. 66, 67; Suckly v. Furse, 15 Johns. Cases N. Y. 342; Kinsington v. Inglis, 8 East. 273; Baker v. Ludlow, 2 Johns. Cases N. Y. 268; N. Y. Equitable Ins. Co. v. Langdon, 6 Wend. N. Y. 623; 1 Benn. F. L. Cases 348; 4 id. 37; Bigler v. Cent'l Ins. Co., 20 Barb. N. Y. 635; 2 Ins. Law Jour. 624.

**1253.** FURS have been held as applicable to bears' skins, and those of various other descriptions, chiefly valuable as furs. (Astor v. United States Ins. Co., 7 Cow. N. Y. 202.)

**1254.** A POCKET OF HOPS has been proved to mean one hundred pounds. (Spicer v. Cooper, 1 Q. B. 424.)

**1255.** CORN, in its most comprehensive sense, as used in insurance, signifies every sort of grain, as well as peas and beans; but it has been held *not* to include *rice*. "Corn and

seed," in English marine insurance, are held to embrace all descriptions of these articles in which the "germinating power" continues; hence flour mills, grinding wheat, are called "corn" mills. (2 Arnould Ins. 858; Park Ins. 112.)

**1256.** Insurance covering a "STEAM SAW-MILL;" held to include not only the building, but all machinery necessary to make it a steam saw-mill.

3 Ins. Law Jour. 350; 4 *id.* 414, 462; Bigler v. Ins. Co., 2 Barb. N. Y. 635.

Insurance on a "STARCH MANUFACTORY" will include all fixtures and machinery necessary to the process of starch-making. (1265.) (Peoria F. & M. Ins. Co. v. Lewis, 18 Ill. 553.)

**1257.** Where the insurance was upon a "*flax factory*," and the insured notified the agent that he intended to put in *rope machinery*; and was informed by him that "it would make no difference, as the term '*flax factory*' was broad enough to embrace '*rope-making*.'"

Held: That the decision of the agent was correct.

1 Ins. Law Jour. 752; 12 Gray Mass. 545; 2 Hall N. Y. 490; Bryant v. Fire Ins. Co., S. C. N. Y. 4 Benn. F. I. Cases 37; Wall v. Howard Ins. Co., 14 Barb. N. Y. 383.

**1258.** Insurance upon a "*house*" is ordinarily held to embrace everything appurtenant and necessary to the *main* building; consequently a *back* building will be considered necessary, if the house be covered to its full value. (1261.)

Workman v. Ins. Co., 2 La. 507; 1 Benn. F. I. Cases 378; Blake v. Ins. Co., 12 Gray Mass. 265; 2 Hall N. Y. 490; Angell Ins. 153, § 106.

A *house* built upon leased ground is *personal* property. (279b) and authorities there cited.

**1259.** A policy upon a "*building in course of erection*" does not include any material not actually built into the house. Ellmaker's Ex'r. v. Franklin F. I. Co., 5 Pa. St. 583; Ins. Co. v. Stewart, 19 Pa. St. 45; 2 Benn. F. I. Cases 519.

**1259a.** Held: The owner of a *third and upper story of a building* must keep the roof in repair at his own expense; and he cannot recover from the owners of the stories below him any portion of such expense, although the repairs were to protect the property of such owner; and that such owners are, in legal contemplation, owners of distinct buildings, the one situated over the other.

**1260.** In the Hamburg form of policy "insurance upon a building comprises all parts thereof *which are not especially excepted.*" (**130, 132-2.**)

**1261.** A *cellar* is never called a story in describing the height; and the word "building" includes it, unaffected by the idea of its height above the foundation. (*Erwin v. N. Y. Cent. Ins. Co.*, 32 N. Y. 213.)

*Benedict v. Ocean Ins. Co.*, 27 N. H. 149.

**1262.** A "*coffee house*" has been held *not* to be an inn. (*Pitt v. Lansing*, 4 Camp. 76; *Hobby v. Dana*, 17 Barb. N. Y. 111.)

**1263.** A "*barn*" may mean a "farm building;" but "farm-ing stock" does not include growing crops.

**1264.** Where one policy read "on their two-story frame paper-mill building, owned and occupied by them as a paper-mill, \* \* \* and on their fixed and movable machinery, *engine and boiler*, shafting, gearing and belting, *all contained in the said mill;*" and a second policy read, "on their two-story frame paper-mill, with one story addition, \* \* \* and on machinery, and tools and appliances, other than engine and boiler, used in the manufacture of paper, contained *in said building;*" and a third read, "on their engine and boiler, and fixtures in engine-house connected with paper mill." \* \* \* The first policy would, under the rulings above cited, cover the "one-story addition," which contained the "boiler and engine" covered by its terms expressly as "contained in the said *mill,*" though no mention was made of the "one-story addition" therein. (**202, 1258, 1276.**)

*Harper v. Albany Ins. Co.*, 17 N. Y. 198; *Same v. N. Y. City Fire Ins. Co.*, 32 N. Y. 441.

**1265.** Where a policy covered "all articles making up the stock of a *pork-house*, and all within the building and pertain' thereto"—

HELD: "To cover everything properly belonging to the stock of a *pork-house*, without regard to the particular ownership of each and every article contained in or appurtenant to the building, although the clause in the policy requires 'goods on commission' to be insured as such."

*Home Ins. Co. v. Favorite*, 49 Ill. 259; *Ætna Ins. Co. v. Jackson*, 16 B. Monroe Ky. 250.

**1266.** Where a policy covered "cattle and hogs, and the product of the same, and salt, cooperage, boxes, and articles used in packing in their stone and frame packing establishment, shed and yards adjoining, their own, or held by them in trust or on commission, or sold but not delivered":—

**HELD:** "That a quantity of coal in the yard, which was shown to be an article necessary to be used in carrying on the packing business; and the quantity on hand reasonable for the amount of business done in the establishment, was covered by the policy."

**ALSO HELD:** "That a quantity of barrels and tierces held by the insured on storage were also covered by the clause 'held in trust.'" (Phoenix Ins. Co. v. Favorite, 49 Ill. 259, and authorities last above cited.)

**1267. STOCK IN TRADE:** The meaning of this term varies according to the kinds of trade to which it may be applied; but in all cases the term is restricted to personal or chattel property only. Where the policy covered "stock in trade as a baker,"

**Held:** "The words 'stock in trade' must have a more extended signification than when applied to the business of a merchant; and in this case, they covered all the tools and implements necessary for carrying on the business of a baker; and, therefore, included the *horse and cart* as well as articles in his house." (Moadinger v. Mech. F. I. Co., 2 Hall N. Y. 490.)

1 Benn. F. I. Cases 285; Angell Ins. 152; 1 Phillips Ins. 250, § 489; 3 Walf. Cyc. 427, citing 27 28 Vic. c. 18, § 9, defining "stock in trade"; Crozier v. Phoenix Ins. Co., 2 Hannay N. B. 260.

**1268.** Where a policy covered "stock in trade, household furniture, linen, wearing apparel and plate, it was held that the policy was intended to cover *household linen*, or apparel, and not a stock of linen goods." (Watchorn v. Langford, 3 Camp. 422.)

Angell Ins. 148, § 96; Clary v. Protection Ins. Co., 1 Ohio 227; 1 Phillips Ins. 251.

**1269. STOCK IN TRADE**, in a specified business, includes the materials, and every thing needful for carrying on the business. Thus the stock of a "rope maker" was held to cover stock to be manufactured, and not that made up. (Wall v. Howard Ins. Co., 14 Barb. N. Y. 383.)

**1270.** In the case of Kraus & Co. v. Germania, Howard and Baltimore Ins. Cos. (S. C. Md.), covering upon a pork-packing house and contents, it was held that the phrase "stock of

pork" did not cover lard in casks; and that "stock of provisions" included all meats and everything used for food, including salt and condiments used in curing the meat; but did not include "ice" in the cooling chamber. Also that empty barrels, rope, etc., were not included in either of the above terms.

**1271.** "STOCK, RAW, WROUGHT OR IN PROCESS;" or the equivalent, "manufactured, unmanufactured or in process of manufacture." These phrases are held to include every thing necessary and useful to the ordinary and successful prosecution of the particular business to which they may be applied, in any portion of the act and process of manufacture. (1252.)

*Spratley v. Hartford Ins. Co.*, 1 Dil. C. C. Conn. 392; *Peoria F. & M. Ins. Co. v. Lewis*, 18 Ill. 553; *Crosby v. Franklin F. I. Co.*, 5 Gray Mass. 504; *Home Ins. Co. v. Favorite*, 49 Ill. 273; *Phoenix Ins. Co. v. Same*, 49 Ill. 269; 1 *Phillips Ins.* 25, § 429, n. 2.

**1271a.** "*Manufactured*," "*wrought*," or "*finished*," is the article in the completed form, and embraces all completed goods, whether packed in bales, packages, or boxes; and the word "stock" will cover all boxes, cases, cans, wrappers, and labels used, or needful in preparing the article for use or for sale.

**1271b.** "*Unmanufactured*" or "*Raw*," will include any or all materials or ingredients used in the manufacture or preparation of the finished articles, either in their original packages, or broken for the purpose of manufacture; and if cans, boxes, barrels, cases, etc., are needful for their economical keeping and preservation while so in use, they will also be covered under the term "stock."

*Mondinger v. Ins. Co.*, 2 Hall N. Y. 490; *Spratley v. Hartford Ins. Co.*, 1 Dil. C. C. Conn. 392.

**1271c.** "*In process of manufacture*" or "*unfinished*," will include all materials or ingredients already used, and the value of the labor bestowed in the manufacture of the articles, in their unfinished condition at the time of any loss; but will not include the utensils or implements of manufacture, nor materials not included in the unfinished articles,

*Appleby v. Astor Ins. Co.*, 2 Ins. Law Jour. 783, citing *Pindar v. Ins. Co.*, 38 N. Y. 364; *Lee v. Howard Ins. Co.*, 3 Gray 592; *Macomber v. Same*, 7 id. 257; *Whitmarsh v. Char. Oak F. I. Co.*, 2 Allen Mass. 581; *Richards v. Protection Ins. Co.*, 30 Me. 373.

**1272.** "*Et Cetera, &c.*:" This character is held to cover and include everything of the same, or similar kind and nature. Lord Coke defines it as meaning "whatever else *ought to have been expressed*."

**1273.** Where a policy covered "stock of watches, watch-trimmings, &c." HELD "to include the entire stock of the insured, consisting of plate, silver-ware, tools of trade, and such other goods as form part of similar stocks in Boston." (*Crosby v. Franklin F. I. Co.*, 5 Gray Mass. 504; 4 Benn F. I. Cases 35.)

**1274.** VESSELS: Insurance upon a "vessel" in course of construction does not cover materials and other work prepared to be put into it, and lying in the ship-yard, and in the sail-loft therein, until actually built into the vessel. (*Mason & Leap v. Franklin F. I. Co.*, 12 Gill & J. Md. 468.)

*Hood v. Manhattan F. Ins. Co.*, 11 N. Y. 532; 2 Duer N. Y. 191; *Ellmaker v. Ins. Co.*, 5 Barr Pa. 183.

**1275.** Where the insurance covered upon "his stock of timber, including planks, futtocks, knees, *locusts*, standards and stagings," it was held that "the locust capstans, partly prepared for the vessel, which was covered by insurance, were covered by the policy." (*Webb v. National F. I. Co.*, 2 Sandf. N. Y. 497.)

3 Benn. F. I. C. 51; 1 Philips Ins. 251, n. 5.

**1276.** LOCATION of Property: A policy of insurance upon machinery, consisting, among other items, of cards and pickers, "contained in the four story and basement brick building." The pickers were in a one story building of brick, with floor on a level with the first story, and joining the main building, entering from it through a frame building, and then through a large iron door, "as if going from the house into a kitchen." There were no pickers except in this one story room. Held: "the picker room was a part of the first story in which the property was insured."

**1277.** "The insurance agent who effected the insurance, knew the location of the pickers, and there was no misrepresentation to him. The company was bound by his acts."

**1278.** "The primary object was to insure the property described; its precise location was subordinate, and, in the absence of misrepresentation as to the location, the presumption is that the parties treated that as of less importance."

**1279.** "Declarations of the principal agent of the company to the agent who effected the insurance, that 'the company would not insure the pickers,' would have no effect against the written policy." (*Meadowcraft v. Standard F. I. Co.*, 11 P. F. Smith, 61 Pa. St. 91.)

*Lycoming Ins. Co. v. Updegraff*, 40 Penn St. 311 ; 5 Benn. F. I. Cases 258.

**1280.** Where a policy covered property "*contained in a frame dwelling house and bake-house, front and rear.*" HELD: "Not to include certain barrels of flour stored in a shed leading from the bake-house to the front house." (*Moadinger v. Ins. Co.*, 2 Hall N. Y. 490.)

**1281.** A policy covering "goods in the *store part* of the building," which were subsequently removed to the second and third stories, the store being occupied by other parties at the time of the loss. HELD: "That the goods were not within the spirit and letter of the policy. (5 Ins. Law Jour. 744.)

**1282.** Under the stipulation that "the houses, buildings, or other places where goods are deposited and kept, shall be truly and accurately described," HELD: "That such condition related to the *construction* of the house, and not to 'the interest' of the parties in it."

**1283.** Where an indorsement was made upon the policy that "the communication made in the adjoining stores does not prejudice this insurance." HELD: "That this indorsement did not, of itself, extend the insurance over the goods in the adjoining store, though the insured occupied both stores."

**1284.** Where a policy covered "*furniture*" generally in a house. HELD: "To cover *furniture* stored in the garret and seldom used, as well as that in daily use. (*Clarke v. Firemen's Ins. Co.*, 18 La. 431.)

**1285.** Where the policy of a commission and forwarding house covered "*goods, wares, and merchandise*," as well as "*goods in trust or on commission*." **Held:** That certain goods in boxes and loose, said to be *furniture, wearing apparel, and books*, held on account of the owner, were covered by the policy, and the insured were liable to the owner for the amount of his loss, out of the proceeds of such policy. (*Siter v. Morris*, 18 Penn. St. 213; 3 Benn. F. I. Cases 117.)

**1286.** "*Furniture*" presents some peculiarities: In possession of and in use by the owner, it would be household furniture; but, in an auction or other store for sale, or in the hands of warehousemen on storage, it would be merchandise, and a policy covering "*merchandise on storage*" would cover it. See authority last above cited.

**1287.** A policy on "*English, American, and West Indian goods*" will not cover *tea* and *nutmegs*, they being neither of the above.

**1288.** "*CONTAINED IN.*" This expression is frequently found in fire policies, and has been variously, and not harmoniously construed by the courts of several of the States. In the case of the Annapolis & E. R. R. Co. v. Ins. Co. (32 Md. 27), the Court

**Held:** "The words 'contained in' when found in a policy to a railroad company, on 'cars contained in' carhouse No. 1, and on engines, 'contained in' engine house No. 2, were designed to limit the liability of the company to the time during which the cars and engines were actually in their respective houses, Nos. 1 and 2. That the engine having been damaged by fire, while making a trip out of the house No. 2, no recovery on the policy could be had for such damage."

*Severance v. Continental Ins. Co.*, 5 Bias. U. S. 156; *Fitchburg R. R. Co. v. Ins. Co.*, 7 Gray Mass. 641, 4 Benn. F. I. Cases 114; *Prov. R. R. Co. v. Yonkers Ins. Co.*, 10 R. I. 74; *Leibenstein v. Ins. Co.*, 45 Ill. 301; *Same v. Aetna Ins. Co.* *id.* 203; *English v. Ins. Co.*, 21 N. West. Rep. 340; *Boynton v. Clinton Ins. Co.* 16 Bosw. 254; *Woods v. Hartford Ins. Co.*, 13 Conn. 544; *Wood Fire Ins.* 108, § 47, 109; *Phoenix Ins. Co. v. Vorhis Allen Co.*, Ohio Cir. Ct.; *Bradbury v. Fire Asso. S. C. Maine*; *Eddy Street Foundry Co. v. Ins. Co.*, U. S. C. C. 330; *Lyons v. Prov. Wash. Ins. Co.*, S. C. R. I., 10 Ins. Law Jour. 773; *Wall v. E. Riv. Ins. Co.*, 3 Seld. N. Y. 370; *Hartford Ins. Co. v. Farrish*, 73 Ill. 166; *Schertzer v. Ins. Co.*, 46 Md. 506, 3 Ins. Law Jour. 72; *Harris v. Royal Canadian Ins. Co.*, S. C. Iowa, 5 Ins. Law Jour. 525; *Haws v. St. Paul F. & M. Ins. Co.*, S. C. Pa., 18 Ins. Law Jour. 561, overruling *Haws v. Fire Asso.*, 114 Penn. St. 431, *infra*; *Maryland Ins. Co. v. Gulsdorf*, 5 Ins. Law Jour. 334.

**1288a.** In the Eddy St. Foundry case, *supra*, Mr. Justice CLIFFORD said :

"Place and time and situation, therefore, as given in the application, constituted an essential element in the description of the property ; and as that description was a part of the contract, it was necessarily material, for it was the property so described, and no other, that was included in the risk."

Judge CARPENTER, of the Supreme Court of Rhode Island, in overruling the prior decision of Judge Potter of the same court, upon a re-hearing of the case of *Lyons v. Prov. Wash. Ins. Co.*, *supra*, said :—

"We have no doubt that if the question were to be decided upon authority, it must be taken as the general rule that all the *material* statements of the policy of insurance, including the statements *as to the place in which the insured property is situate* are *warranties* ; and such warranties *must be true*, and *must continue to be true*, during the whole life of the policy, as the condition of any recovery thereunder."

**1289.** On the other hand there are decisions, mostly of the Western State Courts, to the following effect :—

1. Location, as described in the policy, is a warranty as to that class of chattel property only, the use or enjoyment of which does *not* contemplate or embrace its more or less frequent removal from place to place for the purpose of such "use and enjoyment ;" as household furniture, stocks of merchandise, etc., etc.

2. That location as described in the policy is a *representation* only, and not a warranty, when applied to that class of chattel property the "use and enjoyment" of which *does* contemplate and embrace temporary or daily removal thereof, for such use and enjoyment ; such as wearing apparel, horses, mules, carriages sent for repairs, etc., etc. ; and that it is the province of the court to *assume* that it was the intention of the parties to the contract that the insurance should protect the several subjects while thus absent from the designated place for the purposes of such use and enjoyment.

**1290.** In fine, if the property covered be of such character as to render its retention in one place certain, the words "contained in" should receive a *restrictive* construction ; if such retention would defeat the proper use and enjoyment of the property under insurance, then the words are to be held as *descriptive* only. In support of these propositions the following cases are cited :—

**1290a. Vehicles :** At a repair shop, and there burned, covered by the policy as "contained in a certain barn." *McCluer v. Girard F. I. Co.*, 43 Iowa 439, 4 Ins. Law Jour. 745 ; *Niag. F. I. Co. v. Elliott*, S. C. App. Va., 18 Ins. Law Jour. 628. *Lond & Lanc. Ins. Co. v. Graves*, S. C. Ky., Feb., 1888 : carriage burned at repair shop.

**1290b.** *Wearing Apparel*: Longueville v. Ins. Co., 8 C. Iowa, 8 Ins. Law Jour. 845, covered by policy as contained in a dwelling house, was damaged by a spark from a cigar while the wearer was on a sleigh ride.

*Noyes v. Ins. Co.*, 8 C. Wis. 1885, 15 Ins. Law Jour. 59: Dolman covered as "contained in a dwelling"; burned at a shop where it was sent for repairs.

*Towne v. Fire Assn.*, Appel. Court Ill., 1883, company not held liable, as clothing had been removed several months.

**1290c.** *Horses*: Peterson v. Miss. Val. Ins. Co., 24 Iowa 494, covered by insurance as "contained in a barn"; burned while away from home, in a hotel barn.

*Miles v. Farmers Ins. Co.*, 37 Iowa 460: covered by insurance as "contained in a barn," but killed by lightning on the way to mill.

*Holbrook v. St. Paul F. & M. Ins. Co.*, 25 Minn. 229, 4 Ins. Law Jour. 861: mules covered while "contained in a barn," removed elsewhere while barn was being repaired, and some of them killed."

*De Graff v. Queen Ins. Co.*, 8 C. Minn., 17 Ins. Law Jour. 864: covered by the policy "in the place herein set forth and not elsewhere," removed to a new barn and there killed by lightning. See also *Traders Ins. Co. v. Barclift*, 45 N. J. 543, a similar case.

*Haws v. Fire Association*, S. C. 114 Penn. St. 431, covering horses "all contained in a new two-story frame barn, etc.," with ordinary lightning clause attached; certain of the horses were killed by lightning while in the field. Company held liable.

*Haws v. St. Paul F. & M. Ins. Co.*, same court, 18 Ins. Law Jour. 561: under same form as to location, with the ordinary lightning clause, and the following additional saving clause: "This policy does not cover or insure property of any kind while removed from the particular building therein described, or kept or used in any other place or location, unless otherwise specified in the policy."

The trial court gave judgment in favor of the company, which was affirmed upon appeal by the Supreme Court, thus overruling the previous case, last above cited.

**1290d.** It would seem that the clause of the St. Paul F. & M. Co., above quoted, was so precise and exact that the court could not ignore it, and just herein it was that the two cases differed, and judgment was given accordingly.

**1290e.** Another restrictive clause, found in the case of *Harris v. Royal Canadian Ins. Co.*, *supra*, and not common in fire policies, to the effect that, "in case of loss the claimant must (*in the proofs of loss*) show the property to have been destroyed *in*

*the place designated in the policy*" doubtless had its effect upon the ruling of the court (in Iowa), where all of the customary clauses, as to the location of property at the time of loss, have been set aside. It might be well to make a trial of these two, which have been recognized as effective where the others were held nugatory.

## PROPERTY.

**1291.** Property is a thing owned; anything which a person may have a legal title to, movable or immovable.

Whiton v. Old Col. Ins. Co., 2 Metef. Mass. 1; Holbrook v. Brown, 2 Mass. 280; Bouv. Law Dict., Title.

*Absolute* property, where the right and interest are held to the exclusion of all others.

*Qualified* property, where more persons than one may have an interest; or where the interest is separated from the possession. (2 Sharswood Bl. Comm. 396; 3 Binn. Pa. 646.)

*Personal* property is the right or interest which a man has in things personal—movable or separable from realty. A house may be, and often is, personal property.

**1292.** Property may thus have different meanings dependent upon the connection in which and the purposes for which it is used. In one instance "property" was held to cover bank bills as within the intent of the contract. (1 Ins. Law Jour. 69; 2 *id.* 814.)

In a clause prohibiting over-insurance, the term may mean the *interest* of the insured. In a clause forbidding alienation, it is held to designate the thing covered by the policy, and not the interest of the insured.

Holbrook v. Brown, 2 Mass. 280, 1 Ins. Law Jour. 60, 61.

Articles kept for *use* in a store building are included in the term "property," but not in merchandize. Merchandize may be property, but property is not always merchandize. (**1293.**) (Burgess v. Alliance Ins. Co., *id.* v. N. Eng. Ins. Co., 10 Allen Mass. 221.)

**1293.** ESTATE: When an administratrix took a policy on the "Estate of Daniel Ross" —

**HELD:** The words used were intended to designate the persons holding the legal title; and to speak of the property left by the deceased person, including the real property, especially before a final settlement of his affairs, as his estate, if not accurate, is not an unusual designation. We are of opinion that the interests of both the administratrix and of the heirs, in the insured property, were covered by the policy." (*Clinton v. Hope Ins. Co.*, C. App. N. Y. 1871; 1 *Ins. Law Jour.* 436.)

*Herkimer v. Rice*, 27 N. Y. 37; *Higginson v. Dale*, 12 Mass. 96; 6 *Ins. Law Jour.* 484; *Weed v. Lond. & Lanc. Ins. Co.*, C. App. N. Y., 18 *id.* 820; 51 *Barb. N. Y.* 151; 28 *Iowa* 314.

**1294. CHATTELS:** Every species of property, movable and immovable, less than a freehold. Personal chattels include everything movable, as animals, household stuff, money, jewels, etc., everything that can be put in motion and transferred from one place to another. (7 *Ins. Law Jour.* 457.)

**1295. GOODS:** A term not so wide in its application as chattels. It applies entirely to inanimate things, not including fixtures. In marine insurance the term applies to merchandize only. (*Park Ins.* 21; 1 *Arnould Ins.* 212, 222.)

*Goods and Chattels:* An expression as much more comprehensive than *goods* alone, as *chattels* is wider in its application than *goods*. (**1294.**) (*Bouv. Law Dicty. Title.*)

**1296. GOODS, WARES, AND MERCHANDIZE:** A form of expression, formerly used in policies, as intending to include everything in the nature of mercantile commodities. *Wares* apply more particularly to manufactured articles of trade. The phrase seems to be surplusage, as the term *goods* includes not only wares and merchandize, but much other inanimate property, which is neither wares nor merchandize, as household furniture, personal or movable estate, etc., equivalent to the French term "*biens*." The expression does not embrace perishable commodities. Its use is chiefly confined to the marine branch. (1 *Philips Ins.* 225, § 431, and authorities cited.)

**1297. Household goods:** This phrase includes all permanent articles of household use, which are not consumed in their employment. (**1720.**)

**1298.** *Household stuff* comprises all personal chattels that may contribute to the use or convenience of the household, or ornament of the house, whether useful or ornamental only, as plate, china, beds, bedding, linen, musical instruments in use, pictures, paintings, etc. (**1721**), but does not include wearing apparel, or articles of personal adornment.

**1298a.** *HOUSEHOLD: FAMILY:* Those who dwell under the same roof and constitute a family. It is not necessary that they should be under one roof, or that the father of the family should be with it, if the mother and children keep together so as to constitute a family.

1 Bouv. Law Dicty. 673; Carmichael v. Ins. Co., S. C. Mich. 1883, 9 Ins. Law Jour. 428; Williams v. Williams, 1 Sim. N. S. 358; High C. Chy. Div., 24 W. R. 1015.

**1298b.** *Wearing Apparel:* Family wearing apparel includes all articles of clothing or raiment owned and in use by any and each of the members of the insured's family or household for whom he provides, but does not cover watches, jewelry, artificial limbs, nor other articles of a personal nature that are in no sense clothing or raiment.

Clarey v. Protection Ins. Co., Wright, Ohio, 227; 2 Johns. N. Y. 261; 9 Ins. Law. Jour. 108, 111.

## MERCHANDISE.

**1299.** *Merchandise:* HELD to include those things which merchants buy and sell, either at wholesale or retail; property not to be kept unchanged, but to be used for traffic and commerce. (**1762**.) The term is more particularly applied to *personal chattels* only.

The fact that a thing is sometimes bought and sold does not make it *merchandise*. Nor does a single act of trade make a *merchant*.

1 Magens' Essays 10, § 15; 2 *id.* 46, 89, 13; 1 Arnould Ins. 210, § 98; Weskt, 261; Boynton v. Ins. Co., 16 Barb. N. Y. 254; Liddle v. Market Ins. Co., 4 Bosw. N. Y. 179; Storn v. Ins. Co., 45 Me. 175; 45 Ills. 482; 51 *id.* 282; 11 Fost. N. H. 238; 1 Wr. Pa. 298.

Mere evidences of value, as bank-bills, are not *merchandise*; though, under certain contingencies, *specie dollars* have been covered under the term "goods, wares and merchandise" in marine practice. (**837, 1292.**)

2 Benn. F. I. Cases 115, 116; "Clean policy," 3 *id.* 120; *Siter v. Morris*, 13 Penn. St. 218; 1 Story U. S. C. C., 10, 53, 54; 8 Peters U. S. 277; 4 Benn. F. I. Cases 333; 5 *id.* 504; Angell's Ins., § 203; 4 *Ira. Law Jour.* 932; 2 *Hannay N. B.* 200; 9 L. C. R. 448; Wood Fire Ins., § 314; Watts & Serg. Pa. 506.

**1300. Merchandise without exception:** In Pennsylvania, and Maryland policies are frequently written to cover "*merchandise generally*," and "*merchandise without exception*." These phrases, under the form of policy used in those states, are synonymous, or nearly so, with "*merchandise extra hazardous*," and "*merchandise specially hazardous*," of the classes of hazards of the NATIONAL BOARD form, as including those classes under the expressions "generally," or "*without exception*."

This expression, "without exception," or its equivalent, "of every description," is peculiar to policies of the city of Philadelphia, where it seems to be applied on every available occasion, many times to the injury of insurer, as follows: "fixed and movable machinery and apparatus of *every description*;" "stock and materials of *every description*;" "*merchandise without exception*," etc., etc., the effect being to render the underwriter liable for anything and everything in the remotest degree connected with the risk.

**1300a. Horses as merchandise:** Marine practice, 1 Magen's Essays, 10; 2 *id.* 7, 38, 40, 43; *Alleyne v. Maryland Ins. Co.*, 8 Gill & Johns Md. 190. "A team of horses," 15 Barb. N. Y. 568; 5 How. Pr. 288.

2. **GROCERIES:** This term includes teas, coffee, sugar, spices, fruits, liquors, and other articles of food for the table. (4 Benn. F. I. C. 712.)

3. **PROVISIONS:** This word embraces food, victuals, fare, provender,—anything to eat for man or beast.

4. **PRODUCE: Product:** That which is made, formed, or produced by nature, as hay, grain, fruits or metals, etc.

5. **COMMODITY:** The general produce of the country, as articles of commerce; everything movable that is bought and sold.

## MERCANTILE ALLOWANCES.

**1300b.** Allowances, so-called, are made upon merchandise, under certain circumstances, and known among merchants as draft, tare, trett, and cloff, as follows:—

1. **DRAFT:** A deduction formerly made from the original gross weight before taking off the trett, but no longer used.
  2. **TARE:** An allowance made for the weight of casks, barrels, boxes, bags, etc., containing the goods.
    - a. *Real or Open Tare:* The actual weight of the package.
    - b. *Customary Tare:* An established allowance for weight of boxes, etc., according to usage in any trade.
    - c. *Average Tare:* Medium tares, where only a few of a number of packages are weighed, and their average taken as the rate of the weight of the whole.
    - d. *Computed Tare:* An agreed tare.
  3. **Super Tare:** An additional tare where the commodity or package exceeds a certain weight.
  4. **TRETT:** An allowance formerly made of four pounds in every 104 pounds of *suttle* weight, made for *Ullage*; that is, for dust or sand, or for water, or for wear and tear of the commodities. Its use has now been abandoned as a custom.
  5. **CLOFF or Clough:** A further additional allowance of 2 pounds in every 3 cwt., of the *seconduttle*, or net weight after the trett has been deducted.
  6. **NET WEIGHT:** The result after the tare only has been deducted.
  7. **SUTTLE:** The result after both tare and trett have been allowed.
  8. **ULLAGE:** A technical term applied to sand, dust, etc., adhering to boxes, barrels, bags, etc., for which trett and cloff are allowed in the weight.
  9. **OUTAGE:** A deduction of one gallon from the gauge mark on the barrel, allowed upon certain classes of liquids, as turpentine.
  10. **BREAKAGE:** The United States Custom House allowance for breakage in bottled liquors is 5 per cent., in lieu of actual valuation.
- As a rule, however, "seller's weight is law," and any loss in weight in transit is at the buyer's risk.

## LAW OF AGENCY.

**1301. Conditions of the Policy.**—"It is a part of this contract that any person other than the insured, who may have procured this insurance, to be taken by this company, shall be deemed to be the agent of the assured named in this policy, and not of this company, under any circumstances whatever, or in any transaction relating to this insurance."

This condition has been construed to mean that the agent or broker obtaining the insurance is, so far, the agent of the applicant for that purpose; but when the insurance has been

secured, his agency for the insured thereupon ceases; and if he is intrusted with the policy for delivery and collection of the premium therefor, he becomes the agent of the company for this purpose. Should he collect the premium, and fail to pay it over to the company, it will be the loss of the company and not of the insured. (**786a, 787, 788**), and authorities cited.

16 *Ins. Law Jour.* 178; *Kebler v. N. O. Ins. Co.*, *id.* 738; *Ins. Co. v. Hartwell*, *S. C. Ind.*; *Patterson v. Royal Ins. Co.*, 14 *Grant Chy.* 169, 9 *Phila.* 50.

**1302.** By the common law, any person having power to do a thing in his own right may do it by an agent; and correlatively, that which is lawfully and by authority done by an agent is to be deemed and treated as if done by the principal himself, within the power delegated to such agent.

*Worrall v. Munn*, 5 *N. Y.* 239; 4 *Ins. Law Jour.* 465, 600; 8 *id.* 402; 9 *id.* 100, 194; 2 *Parsons Ins.* 416; 31 *Conn.* 517; *Patterson v. Royal Ins. Co.*, 14 *Grant Chy.* 169.

#### RESPONSIBILITY OF AGENTS TO THEIR PRINCIPALS.

**1303.** Agents are bound to know the law, and act accordingly for the benefit of their principals. They are bound to execute orders of their principals whenever, for a valuable consideration, they have undertaken to perform them; and their liability in case of deviation is, as in cases of negligence and misconduct, measured only by the extent of the damage sustained by their principals. It matters not in what trifling details specific instructions are disobeyed or neglected, as the writing of risks at less than authorized rates; writing upon forbidden risks; failing to cancel policies promptly when so instructed, or in any other respect failing to comply with the requirements of their principals, whether through ignorance of the law, or by design, or simple negligence, the same degree of responsibility rests upon the agent. (*Wallace v. Telfair*, 2 *T. R.* 188 n; 1 *Esp.* 75; *Smith v. Price*, 2 *F. & F.* 748.)

He is also required to exercise the same degree of care and skill in the business intrusted to him which men capable of properly transacting such business would bestow upon it.

It is also an agent's duty to keep his principal informed of his doings under his appointment, and give him reasonable notice of whatever may be important to his interest to know.

Delafield v. Ins. Co., 2 Hill N. Y. 159; Jackson v. Van Dalfsen, 5 Johns. N. Y. 43; Carroll v. Charter Oak Ins. Co., 40 Barb. N. Y. 293; Post v. Aetna Ins. Co., 43 Barb. N. Y. 351, 372; 2 Parsons Ins. 424; Perkins v. Wash. Ins. Co., 6 Johns. N. Y. 485; *id.* 4 Cow. N. Y. 645; May Ins., 123 *et seq.*; Wharton Agency, § 266; 1 Daly N. Y. 190; 16 Ins. Law Jour. 75; Pratt & Cutter v. Phoenix Ins. Co., S. C. Minn. 1886.

As to instructions to cancel policies : if not canceled at once, the agent is liable. *Maxim*, "Cancel first, and argue afterwards."

Phoenix Ins. Co. N. Y. v. Pratt & Cutter, S. C. Minn. 1886; Franklin Ins. Co. v. Sears, U. S. C. C., So. Dist. O., 13 Ins. Law Jour. 768; Washington F. & M. v. Cheseboro, U. S. C. C., 17 Ins. Law Jour. 58; Phoenix I. Co. N. Y. v. Frissell, S. J. C. Mass.

#### AUTHORITY OF AGENTS.

**1301.** A corporation can bind itself and act in any respect only by and through its *agents*, and may, unless its charter restrains its power in this respect, without seal authorize an *agent* to bind it.

Calvin v. Provincial Ins. Co., 20 U. C. C. P. 267; Baker v. Cotter, 45 Me. 236; Leary v. Baughard, 21 Iowa 185; Topping v. Bickford, 4 Allen Mass. 129; Conover v. Ins. Co., 1 N. Y. 290; s. c. How. App. Cases 604; 3 Denio 254; 32 N. H. 313; 50 Ill. 111.

2. The appointment of an *agent* may be by writing, or orally, or impliedly by the course of business and correspondence between the principal and *agent*.

3. When the whole authority is conferred by a written instrument, its nature and extent must be ascertained from the instrument itself, construed by reference to the usages of the trade to which it relates. It cannot be enlarged by parol evidence, nor can he bind his company, except by policies countersigned by himself.

Story Agency, § 3577; N. Berwick Co. v. N. Eng. F. & M. Co., 52 Me. 336; Sanborn v. Fireman Ins. Co., 16 Gray Mass. 443; Ellis v. Albany City Ins. Co., 4 Lan. N. Y. 433.

4. When an *agent* has no *written* appointment, the jury must decide as to the extent of his authority from what he testifies, and did, coupled with the acts of the company recognizing him. Employment implies authority.

2 Ins. Law Jour. 29; 31 N. Y. 33; 3 Wood & Min., C. C. U. S. 529; Hough v. City Fire Ins. Co., 29 Conn. 10; Port v. Aetna Ins. Co., 43 Barb. N. Y. 351; 63 Ill. 462.

5. The *authority of agents* may be *general* or *specific*—*general*, when it extends to all acts connected with the particular business or employment; *special*, when confined to a single specific act; and will not be narrowed by limitations not communicated to persons with whom they deal.

25 Conn. 51; 8 Wright Pa. 259; 16 Wis. 241; 12 Iowa 126; May Ins. 126; 31 Conn. 517; 19 How. N. Y. 318; 2 Curtis 524; Ins. Co. v. Wilkinson, 13 Wall. U. S. 222; 4 Cow. N. Y. 645; 6 Johns. Ch. N. Y. 485; 23 Wend. N. Y. 18; 57 Mo. 107.

6. He may be agent of the underwriter alone, or a sub-agent, or a surveyor, or agent to solicit applications for insurance, or agent of the insured, or both parties, or he may be a volunteer agent.

Davis v. Scottish Provincial Ins. Co., 15 U. C. C. P. 185; Henry v. Agricultural Ins. Co., 11 Grant's Chy. 125; Penley v. Beacon Ass. Co., 7 Grant Chy. 130; Hendricks v. Queen Ins. Co., U. C. Q. B. 117; Montreal Ass. Co. v. McGillivray, 13 Moore P. C. Cases 87; May Ins., §§ 124, 126; Rossiter v. Trafalgar Assur. Assn., 27 Beav. 377; Post v. Aetna Ins. Co., 43 Barb. N. Y. 351; Baker v. Cotter, 45 Me. 266; Brewer v. Chelsea F. I. Co., 14 Gray Mass. 203; 3 Story Agcy., § 3577; Shea v. O'Connell, 9 Bush Ky. 174; Pierce v. Nashua F. I. Co., 50 N. H. 297; 2 Parsons Ins. 416; 41 Benn. F. I. Cases 600; 4 Ins. Law Jour. 465; 8 *id.* 402, 802; 9 *id.* 100, 104.

#### GENERAL AGENT.

**1305.** An agent intrusted with the blanks of the company has an absolute and unlimited discretion.

May Ins., §§ 124, 126; Baubie v. Aetna Ins. Co., 2 Dil. C. C. 156; Taylor v. Ins. Co., *id.* 282; Gloucester Mfg. Co. v. Ins. Co., 5 Gray Mass. 497.

An agent whose original authority to *sign* the policy, as such, has been proved or admitted, has an implied authority to perform every subsequent act on behalf of his principal that the relation between him and the insured may render necessary. **(1308.)**

May Ins. 126, and authorities *infra*; 25 Iowa 507; 4 Metc. Ky. 915; 5 Nev. 208.

An agent having authority to accept risks, to agree upon and settle terms of insurance and carry them into effect by issuing and renewing policies, is thereby constituted a *general agent* of the company at the place where his business, as such agent, is transacted.

Hotchkiss v. Ins. Co., 5 Hun. N. Y. 90,

The possession and use by an agent of an insurance company's certificates of renewal, together with the exercise of the authority in other instances, indicate that the power of renewing and continuing insurances has been conferred upon such agent.

2 Ins. Law Jour. 3; 4 *id.* 721, 801.

**1306.** A *general agent* for effecting insurance on behalf of a company has full power to insure, renew, and to receive notice of other insurances; and his giving a renewal receipt and subsequently accepting the premium, with notice of a breach in respect to other insurance, is an effectual *waiver* of the breach.

Goit v. Nat. Prot. Ins. Co., 25 Barb. N. Y. 189; *Id.* v. Phoenix Ins. Co., 2 Biss. 335; Jones v. Mut. Life Ins. Co., 1 MacA. 632; 25 Conn. 207; 18 Barb. N. Y. 541; Citizens Ins. Co. v. Sortwell, 8 Allen Mass. 217; Imp. Fire Ins. Co. v. Murray, 73 Penn. St. 221; 4 Ins. Law Jour. 776; *id.* 169; Br. L. Assr. v. Ward, 2 U. C. L. J. 20; 17 U. C. Q. B. 35; 50 *id.* 117-18.

**1307.** Agents clothed with *general* authority as to filling up and issuing policies, and to make original contracts of insurance under the terms of their policies, have authority, before the delivery of the policy, to change or modify the description of the property insured. (Gloucester Mfg. Co. v. Howard F. I. Co., 5 Gray Mass. 497.)

An agent intrusted with blank policies, and authorized to effect insurances for a particular city and its vicinity, insured property in another city, where the company had another agent with similar authority for that city and vicinity:—

Held: That the company was bound by such policy, as he was a *general agent* of the company, and acting within the scope of his authority; and that the company were estopped from setting up their private instructions to such agent, when they were wholly unknown to the insured at the time of taking the policy.

Etna Ins. Co. v. Maguire, 61 Ill. 342; Lightbody v. N. Am. F. I. Co., 23 Wend. N. Y. 18.

**1308.** An agent to subscribe policies is *not*, merely in virtue of such agency, *authorized to settle and pay losses under policies issued by himself as such agent*. Such agent's authority does not extend to the adjustment of loss, unless specially so named.

5 Ins. Law Jour. 71, 207; 6 *id.* 472; 2 Phil. Ins. 525, §§ 1873, 1874; Bell v. Auldjo, 4 Doug. 48; Angell Ins. 506.

In the case of *Richardson v. Anderson* (1 Camp. 43, n. a), Lord Ellenborough said: "If an agent has authority to issue and deliver policies of insurance, he is presumed to possess power to use all reasonable means to effect such adjustment" (of loss).

The "agent" here referred to was one holding a power of attorney, from an individual underwriter, to issue policies, receive premiums, etc. It was customary in London for such agents to adjust losses. (1 Arnould Ins. 143.) No such custom prevails here.

2 Philips Ins. 525, §§ 1873, 1874; 45 Barb. N. Y. 351; 63 N. Y. 531; 52 N. Y. 50.

**1309.** Where the question was whether *verbal permission* to the insured, by the *agent, to retain on sale certain powder on hand at the time of insurance*, and additional insurance in another company by the same *agent*, were facts causing the conditions of the policy against the sale of powder, and against additional insurance on the goods, to fail as a defence to the action, the Court below charged in the affirmative. The company sought a reversal of the judgment, by contending that the knowledge of the agent was not notice to the company of the facts alleged; and that the agent could not, in such a manner make new contracts to bind the company by his acts. Judgment affirmed by a divided court.

*Clark v. Manuf. Ins. Co.*, 2 W. & M. 473; s. c. 8 How. U S 235; Gloucester Mfg. Co. v. Howard Ins. Co., 5 Gray Mass. 497; Citizens Mut. Ins. Co. v. Bartwell, 8 Allen Mass. 217; Hartford Ins. Co. v. Farrish, 8 C. Ill., 5 Ins. Law Jour. 46; Merch. Bank v. State Bank, 10 Wall. U. S. 644; Lungstruss v. Ins. Co., 57 Mo. 107; Viele v. Germania Ins. Co., 26 Iowa 9, and cases cited.

**1310. Special Agent:** An agent appointed for a particular purpose, and under limited powers, cannot, as a rule, bind his principal, if he exceed his authority. (5 Ins. Law Jour. 730, 10 *id.* 306.)

#### AGENT OF THE UNDERWRITER.

**1311.** If an agent of a company neglects to incorporate, in an *application drawn up by himself* for the insured, facts essential to the validity of the policy, which facts he had prom-

ised to insert, the company cannot set up such omission for the purpose of defeating an action on the policy. (4 L. J. 95.)

4 Ins. Law Jour. 195; 13 *id.* 779; 15 *id.* 598; Ins. Co. v. Wilkinson, 13 Wall. U. S. 232; 42 Iowa 46; c. s. 2 Dil. C. C. N. S. 576; Wing v. Harvey, 5 Deg M. & G. 265; 4 R. I. 141; Kelly v. Troy Ins. Co., 3 Wis. 254; Rowley v. Empire Ins. Co., 36 N. Y. 550; 17 Iowa 276; 50 N. H. 297; 25 Conn. 51.

**1312.** Notice given to a duly authorized agent of facts material to the risk is notice to the company.

Moore v. Atlantic Mut. Ins. Co., 56 Mo. 342; Clark v. Manufs. Ins. Co., 2 Wood & M. 472; s. c. 8 How. 235; 53 Penn. Sta. 353.

**1313.** Where premises under insurance have been thoroughly examined by the agent of the company, it is conclusive against the company as to *whatever was apparent*.

10 La. Ann. 737; 4 Benn. F. I. Cases 600; Wright v. Hartford Ins. Co., 36 Wis. 522; 4 Ins. Law Jour. 251.

**1314.** When an agent knows the requirements of the company, and the insured does not, and if the application or policy be defective upon a point well known to the agent, the company and not the insured should be the sufferers. No company has the right to select and send out to solicit patronage and business for its benefit, and then to saddle their blunders upon its customers. (1352.)

Columbian Ins. Co. v. Cooper, 50 Penn. Sta. 331; 1 Ins. Law Jour. 44; 2 *id.* 12; 5 *id.* 5, 73; 8 *id.* 826.

**1315.** Agent's power to waive terms and conditions of the policy, see § 1306, *supra*, and authorities there cited.

**1316.** "The Insurance Law of Maine (sec. 18) provides that a person authorized to receive applications and payments shall be deemed agent of the company in all matters of insurance. Notice by the insured to such agent is binding upon the company.

**1317.** In Michigan, an *insurance agent* is defined by law to be "any acknowledged agent, surveyor, or broker, or any other person or persons, who shall in any manner aid in the transaction of the insurance business of any company."

**1318.** The State of Connecticut requires, that where an insurance company has an agent in another State, upon whom

*service of suit* can be made, as required by the law of such State, it cannot revoke the representative authority of such agent, there being no other agent in such State, and thus prevent service, while it has contracts of insurance outstanding there.

#### THE SUB-AGENT.

**1319.** A sub-agent is the agent of an agent; one empowered to take risks and secure applications for a company, and forward them to his principal, the company's agent, competent to make insurances, and issue policies thereon, such applications to be subject to the approval or rejection of the agent. Such *sub-agent* cannot bind the company, nor can he take an application from himself upon his own property, and bind the company thereby.

31 Conn. 517; 4 Ins. Law Jour. 468; *Krum v. Jefferson F. I. Co.*, S. C. Ohio, 1883; 2 Ins. Law Jour. 12.

An agent may employ a sub-agent, but cannot, without consent of his principal, delegate his authority, and transfer his authority to another—*Delegatus non possit delegare*. If the principal adopt the sub-agent, he becomes thereby the direct agent of the company, and is no longer a sub-agent.

**1320.** *Clerks of Insurance Agents* are sub-agents. The acts of such clerks are the acts of the agents employing them.

*Allen v. St. Louis Ins. Co.*, N. Y. C. A., 10 Ins. Law Jour. 504; *Stephens & Dowe v. Lycoming Ins. Co.*, U. S. C. Ill.; 2 Ins. Law Jour. 6, 12, 23; 3 *id.* 62, 677, 751; 5 *id.* 46; 6 *id.* 450; 7 *id.* 45; 9 *id.* 107; 40 Mo. 450; 4 Camp. 88; 5 N. Y. 566; 68 Ill. 463.

#### THE SURVEYOR.

**1321.** A surveyor is an agent whose authority is restricted to soliciting insurances, and taking applications therefor. When regularly appointed for such especial purpose, and supplied with printed blanks therefor, he has, as incidental to such appointment, the requisite authority to make all needful explanations as to the meaning and effect of the terms employed in the interrogatories in the application form, and to agree with the applicant as to the terms he shall employ to express the facts stated *by himself*, in answer to the questions.

Surveyors, while they may, *when necessary*, act as amanuenses for the applicant, in filling up the application, yet it will be better to leave the application to be filled out by the applicant as far as possible, and thus prevent trouble in the event of disputed claims for loss.

6 Ins. Law Jour. 390; 4 Kern. N. Y. 418; 25 Conn. 465.

**1322.** A surveyor only authorized to take applications, and receive the cash percentage thereon and receipt for the same (the money to be returned in case of the non-approval of the risk by the local agent or company), is not thereby empowered to make contracts for insurance, nor bind the company to the issuing of a policy; nor to waive any conditions of, or make any indorsements upon, policies already issued. Notice to a surveyor is not notice to the company.

51 Ill. 516; 5 Nevada 258; 22 Penn. Sta. 72; 22 Barb. N. Y. 527; 4 R. I. 141; 6 Ins. Law Jour. 3.

#### AGENT OF THE INSURED.

**1323.** Insuring as "agent" for a particular person is equivalent to insuring on his account. (**786.a**), and authorities cited

Angell Ins. 565; Marsh. Ins. 208; Shaw's Ellis Ins. 157, n.; 63 Penn. Sta. 87; May Ins. 123, n. 1; 14 Ins. Law Jour. 844; 7 *id.* 214; 9 *id.* 456.

A concealment or misrepresentation by an agent (a broker) for effecting insurance, or making a representation as to the subject of insurance, is that of his principal, and will have the same effect upon the validity of the policy, as if made by the principal himself. (**567, 605.**)

May Ins. 123, § 122; 7 Ins. Law Jour. 56, 214; Richardson v. Haniston Ins. Co., 21 U. C. C. P. 291.

**1324.** Instructions of a company to its agent to authorize him to receive and forward applications for insurance, to consider himself the agent of the applicant, does not make him such, unless the applicant chooses to recognize him as his agent. (**1301, 1332**), and authorities cited.

**1325.** Where a by-law of the company declared that "the agent taking the application should be the agent of

the applicant," such a law does not divest the agent of his attributes, as agent of the company, while in their employ soliciting risks and taking applications. See (1301), and authorities there cited.

8 Ins. Law Jour. 802; 7 *id.* 50; 3 Benn. F. I. Cases 93, 398; 11 Barb. N. Y. 624; Angell Ins. 510.

**1326.** The insured is responsible for the truth of representations in his application,—the signature and authority of the insured's agent being admitted; any evidence to show that it was not his application would be incompetent. (195 *et seq.*)

Perry v. British Am. F. Ins. Co., 4 U. C. Q. B. 330

**1327.** An agent having general authority to insure for his principal is not thereby authorized to insure in a mutual company, thereby making his principal a member and an insurer of others. (White v. Madison, 26 N. Y. 117.)

#### AGENT FOR BOTH PARTIES.

**1328.** A person may be agent for either of the parties to the policy, or for distinct purposes for both. See (786b), and authorities there cited.

**1329.** It is, however, necessary to the validity of a contract made by one acting as agent for both parties, that he should be previously authorized, or the contract be subsequently ratified and adopted by the principals, or that each purported principal should have given the other party sufficient ground to believe the person assuming to be agent to have been duly authorized as such. (1 Philips Ins. 24, § 24; 3 Ins. Law Jour. 89; 4 *id.* 553; Alabama Gold Life Ins. Co., S. C. Al., 10 Ins. Law Jour. 68; May Ins., § 125.)

**1330.** An agent for two or more companies takes a risk in one of them, and re-insures in the second, for which he is also agent; and before approval or rejection at the head office of such company, the risk was burned. HELD: "That as he was agent for both offices, the policy was made under circumstances which would enable the company, of which he

was agent, to avoid it upon the principles of equity. Contract held invalid." (N. Y. Central Ins. Co. v. Nat. Protection Ins. Co., 4 Kern. N. Y. 85, reversing 20 Barb. N. Y. 408. (1858.)

**1331.** Under the stipulation that "in all cases the insured will be bound by the application, for the purpose of taking which the surveyor will be deemed the agent of the applicant, as well as of the company." HELD: "The surveyor taking the application was agent of both parties; but, as the application was the act of the insured, he was affected by any omission of the surveyor." (1332.) (5 Ins. Law Jour. 240.)

**1332.** Under the clause providing that "any person other than the insured who should procure the insurance, should be deemed the agent of the insured and not of the company." HELD: "The agent (of the company) could not be the agent for both parties. The provision requiring the policy and renewal to be countersigned by a duly authorized agent was antagonistic to the other, and rendered him the agent of the company and not of the insured." (Whited v. Germania Ins. Co., N. Y., 76 N. Y. 415, 8 Ins. Law Jour. 368.)

*Sprague v. Holland Ins. Co.*, 60 N. Y. 138; *Rohrback v. Germania Ins. Co.*, 62 N. Y. 47; *Alexander v. Same*, 69 N. Y. 464.

**1333.** Under the Insurance Law of the State of Maine, an insurance agent cannot be the agent of both parties to the contract. The Law says:—

"Any application for insurance or valuation, or description of the property, or of the interest of the insured therein, if drawn by said agent, shall be conclusive upon the company, but not upon the insured, although signed by him."

#### VOLUNTEER AGENCY.

**1334.** Volunteer agency is where a person acts, not only without the authority, but without the previous knowledge of the intended principal. (720, 720a.) One is agent for another when he volunteers to act without any authority so to do, when such other recognizes his agency, and rati-

fies his act. A party may ratify an act done for him at any time, while he might still do the act as principal, but not afterwards. He must ratify the entire act. (1338, and authorities cited, § 720, 721.) (11 East. 620; 13 *id.* 274, 280.)

**1335.** The general maxims of volunteer agency are :—  
“A subsequent ratification is equivalent to prior authority,” and a “tacit permission is equivalent to an express authority, and supersedes the necessity of a subsequent adoption,” but those only for whom the insurance was intended can become parties to the contract by adoption.

Broom's Leg. Max. 836; *Durand v. Thouron*, 1 Porter Ala. 238; 4 Ins. Law Jour. 550; 2 Duer Ins. 15; 2 Parsons Ins. 417.

**1336.** One may insure in his own name the property of another, for the benefit of the owner, without the latter's previous authority or sanction; and such sanction will insure the interest of the party thus insured, upon his subsequent adoption of it, even after a loss may have occurred to the property subject to the insurance; but claim must be made with reasonable diligence, such as policies “for whom it may concern.” (1233.) (*Mittenberg v. Barconi*, 9 Barr. Pa. 198.)

*Watkins v. Durand*, 1 Porter Ala. 251; *Hughes Ins.* 31; *Marsh. Ins.* 297; 4 Ins. Law Jour. 552; *Ogden v. Montreal Ins. Co.*, 3 U. C. C. P. 511; *De Foe v. Ins. Co.*, 7 U. C. C. P. 5.

**1337.** A volunteer agent is bound to act, not only in good faith, but with all the prudence and skill that the proper execution of the trust may require.

*May Ins.* 124, § 124; *Ela v. French*, 2 N. H. 356; *Tracy v. Wood*, 3d. Mason. U. S. C. C. 132; *Thorne v. Deas*, 4 Johns. N. Y. 84; *Wallace v. Telfar*, 2d T. R. 188 n.; *Wyld v. Pyckford*, 8 Mees & Wel. Exch. 443; *Wilson v. Brett*, 2 A. 113.

**1338.** Where one, without order or authority, effects insurance, intended partly or wholly for another, in a form available to him and applicable to his interest, such other has an election to be a party to such policy, or to decline it, but he will become a party *after notice*, and as such liable for the premium, unless he declines to be so, without unnecessary delay. (1233, *et seq.*) (*Gifford v. Queen Ins. Co.*, 1 Hannay N. B. 439; *DeFoe v. Ins. Co.*, *supra*.)

A supposed principal cannot adopt a part for his own benefit, and repudiate the rest of the supposed agency. See (1334), and authorities referred to.

**1339.** A volunteer agent, like any other agent, must notify his principal of his acts on behalf of such principal, with full particulars of the contract. (1303 for authorities.)

#### REVOCATION OF AUTHORITY.

**1340.** The powers of an agent may be terminated by a revocation of authority, or by its own limitation, either express or implied; or by the death or insanity of the principal, or insolvency of the company. Such limitation is *express*, when the authority covers a specific period of time, or *implied*, when the business delegated is completed; or in case of partnership agency, upon the death of one of the partners.

Story Agency, § 470; Paley Ag'y. 188; 2 Livermore Ag'y. 306, 310; 2 Kent Comm. 641.

**1341.** A general authority may continue to bind a principal after its actual revocation, if the agency were known and the revocation be wholly unknown to the party dealing with the agent, without such party's fault.

McNeilly v. Continental Ins. Co., 66 N. Y. 23; Salto v. Field, 5 Term R 211; 23 Wend. N. Y. 18.

**1342.** The revocation of the authority of an agent to effect insurance, will not defeat any agreement such agent may have made for insurance, though he will cease to be authorized to bind his principal further.

McNeilly v. Continental Ins. Co., 66 N. Y. 23; Paley Ag. 388-9; *id.* 393-4; Livermore Ag'y. 260-1; 3 Maule & Sel. 344; 1 Camp. 396.

**1343.** Where a policy was delivered by an agent before his authority was revoked, such delivery is binding upon the company, although the insured had prior notice of the intention of the company to revoke such authority.

McNeilly v. Continental Ins. Co., *supra*.

**1344.** A contract of insurance made by an agent of an insolvent company, two days after insolvency, without knowledge of such insolvency on his part, was held to be invalid. (1310.)

McCutcheon v. Rivers, S. C. Nev., 8 Ins. Law Jour. 443.

## SUSPENSION OF AUTHORITY DURING WAR.

**1345.** HELD: "That, if an agent is appointed for a lawful purpose, and afterward war breaks out between the states of the agent and the principal, the agency will continue during the war, for the purpose of carrying out the objects of the agency, but no intercourse is allowed between the principal and agent; and, if his authority was not revoked, he might lawfully still act as agent, so far as he could do so, without any intercourse with the principal, and without making any new contracts between his principal and citizens of a state at war with the state of his principal. He might lawfully receive payment on a contract made before the war. It would be his duty to hold and take care of the property of the principal in his custody. But, beyond this, he could not lawfully act."

## THE PRINCIPAL.

**1346.** The principal is liable for the negligence or unskillfulness of his agent, in the transacting of business of the agency; but he is not liable for the willful acts and wrong doings of such agent.

Story Agency; 25 Conn. 51; 53 *id.* 517; 46 Mo. 557; 11 Harris Pa. 50; 8 Wright Pa. 259; 16 Wis. 241; 17 Iowa 276; 11 N. H. 256; 15 Ins. Law Jour. 628; 2 *id.* 822; 10 N. Y. 345; 58 Barb. 349; 25 N. Y. 600; 26 *id.* 559; 23 *id.* 390.

## GENERAL LAWS OF AGENCY.

**1347.** He who deals with an agent is, as a general rule, bound to ascertain by inquiry the extent and limit of the delegated authority, and when the obligation exists, it is at his own risk and peril that he omits the inquiry. He is also chargeable with the knowledge he ought to have possessed, and the contract of the agent, if he has exceeded his powers, is wholly void.

Chapman v. Lancashire Ins. Co., 12 L. C. J. 49; West. Assr. Co. v. Atwell, 2 L. C. J. 181; Lampkin v. West. Assr. Co., U. C. Q. B. 361; Davis v. Scot. Prov. Ins. Co., 16 U. C. C. P. 185.

**1348.** A mere agent with possession or lien has no insurable interest; hence, the beneficial owner cannot take advantage of an insurance effected by an agent, *in his own name*, under such circumstances; such contract is simply void. (Civil Code L. C. § 1737, *et seq.*)

3 B. & A. 478; 2 Am. Lead. Cases 437; 1 Mann. & Gr. 130; 5 Ell. & B. 870; 31 Mo. 298.

**1349.** A company cannot be affected by any act of an agent not within the scope of his authority; but a company cannot be discharged by *private instructions* to an agent, the insured being ignorant of such instructions at the time of making the contract. So far as third parties are concerned, such *private* instructions are inoperative. (May Ins. § 154; Angell v. Ins. Co., 4 Ins. Law Jour, 427; 2 Kent Comm. 629; Citizens' Mut. F. I. Co. v. Sortwell, 8 Allen Mass. 217.)

Perkins v. Wash. Ins. Co., 4 Cow. N. Y. 645; Com. Ins. Co. v. Un. Mut. Ins. Co., 19 How. U. S. 318; Henry v. Agric. Mut. Ins. Co., 11 Grant Chy. 125; Merrick v. Provincial Ins. Co., 14 U. C. Q. B. 439.

**1350.** No person can act as agent in a transaction in which he has an adverse interest; hence, an agent cannot receive an application from himself and insure his own property, so as to bind his company. The agent desiring to have a policy upon his own property should make out an application in due form, and send it to his company, to issue the policy, which he will charge up in his account with the company, as if issued by himself.

17 Barb. N. Y. 132; 17 N. Y. 421; 14 N. Y. 85; Tucker v. Provincial Ins. Co., 1 Grant Chy. 122.

**1351.** Policies which are valid only when countersigned by a duly authorized agent must not be countersigned by another for him, even when such party holds a power of attorney to act for such agent. (Robinson v. Provincial M. & G. Co., 3 Allen N. B. 379.)

**1352.** It is a maxim that "if either party must suffer from the mistakes of the agent, it must be the party whose agent he is."

Firm. Ins. Co. v. Mann, Ill. Appel. Court; 2 Allen Mass. 569; 25 Barb. N. Y. 437; 1 Story U. S. C. C. 57; 3 Wood & M., C. C. U. S. 529.

**1353.** In a partnership agency, each partner has all of the powers of the firm. Upon the death of either of the partners the agency ceases, and new arrangements will have to be made with companies of the agency.

Ins. Co. v. Ins. Co., N. Am. Ind., 8 C., 3 Ins. Law Jour. 169.

*Duties of an agent* in cases of loss at his agency. See this Title, § (1569).

## AGENTS' BONDSMEN.

**1353a.** The surety on an agent's bond, conditioned that the agent should deliver to the company all property belonging to it, which should come into his hands as agent, is liable thereunder whenever the agent becomes in arrears to his company. (9 Ins. Law Jour. 662.)

2. It is not necessary that the company should notify the sureties upon an agent's bond of any previous delinquency. (Home Ins. Co. N. Y. v. Holloway, S. C. Iowa, Jan., 1885.)

Fire Assoc. of Pa. v. Chepper & Co., S. C. Philadelphia; 5 Ins. Law Jour. 321.

3. Neither is it necessary that the company's commission to the agent should be renewed annually. The requirements of an annual State license does not reduce the agency to an annual tenure. (Scot. Com. Ins. Co. v. Plummer, S. J. C. Mass.)

4. In the event of the bondsman's death, where the heirs, executors and administrators were severally and jointly bound with the agent, such legal representatives are bound for any delinquencies of the agent occurring during his agency, and after death of the bondsman. (4 Ins. Law Jour. 865.)

5. A general agent is liable for the defalcations of his sub-agent, and an action might be had to recover the sums alleged to be due. (Phoenix Mut. Life Ins. Co. v. Holloway, S. C. Iowa, Jan., 1885.)

## COMMON CARRIERS.

**1354.** It not unfrequently occurs that *common carrier* risks are covered by insurance, and in case of loss under such contract it becomes important to know the liability of the *carrier* to ascertain the liability of the underwriter. The following are the general principles applicable to this class:—

**1355.** A *common carrier*, as distinguished from a *carrier without hire*, or a *private carrier for hire*, is one making it a regular business to carry or transport persons or property *for hire*. (**706.**) Angell on Carriers, ch. II., III., IV., §§ 17, 45.

Civil Code L. C., 1672 *et seq.*; Roberts v. Laurier, 26 L. C. J. 378; 5 L. N. 362, 179.

**1356.** *Express companies* are *common carriers* when using their own cars or other means of conveyance. But, when the railroad companies furnish the cars, crates, etc., for the transportation of their freight, the railroad companies are the *carriers*, and the *express* companies are held to be the agents of the several owners.

N. J. St. Nav. Co. v. Merch. Bank, 6 How. 314; 39 Barb. N. Y. 488; Hilt, N. Y. 18; Dorr v. N. J. St. Nav. Co., 1 N. Y. 485; Jeremy Car. 56; 3 Bos. & Pull. 417; Angell Car., § 125.

**1357.** HELD in Wisconsin, LYON, J. :—

"Where a *common carrier* (in accordance with his contract) conveys goods over only a portion of the route between the points of shipment and consignment, and holds them for delivery to some connecting *carrier*, the latter is the owner's or consignee's agent to receive the delivery (*Schneider v. Evans*, 25 Wis. 241); and the liability of the former as a *common carrier* continues until the goods are ready for delivery to such agent, and he has had a reasonable time to take them away."

**1358.** If a *common carrier* unite with his business of carrier that of *warehouseman* at either termination of his route, he may receive goods as *warehouseman*, to hold them until his services as *carrier* commence; in which event his responsibility is that of *warehouseman* only, requiring only ordinary diligence in the care of the property. But, if he accept the goods for transportation, he at once assumes the responsibility of *carrier*. (*G. T. R. R. v. Gutman*, R. C. 477, S. R. L. 452.)

**1358a.** But the carrier is not liable for deterioration to goods carried during transportation arising from any inherent defect or tendency to decay (**1667**), or negligence of the owner in properly preparing them for such transportation, as from leakage, fermentation, death of animals not arising from want of due care.

Angell Car., § § 210-213; Civil Code L. C., § 1675; 2 Kent. Comm. 299, 300; Story Bailm., § 492a; 6 Watts Pa. 424.

Where brute animals are transported, carriers are responsible for their carriage and delivery as for other goods; but such responsibility will not cover losses occasioned by the peculiar risks to which animals are necessarily exposed by

the nature of such transportation, either on vessels or railroad cars, and which by the exercise of care and diligence cannot be prevented. (*Clark v. Roch. & Syr. R. R.*, 14 N. Y. 570.)

**1359.** A *common carrier* is responsible as insurer of the goods intrusted to him for transportation, from the time of receiving until delivery of them to the consignee at the place of destination, against injury or loss, unless it be occasioned by "*the act of God*" or "*of the public enemy*," even though no actual negligence exist. (Civil Code L. C., § 1675; *Forward v. Pittard*, 1 Term R. 27; *McArthur v. Sears*, 12 Wend. N. Y. 190; 1 Term R. 27; 3 Esp. 127, 4 Dougl. 128.)

"*By the act of God*" denotes natural accidents, such as lightning, earthquake, and tempest, and not accidents arising from the fault of man, with or without negligence.

**1360.** "*Public enemies*." Losses caused by "*enemies of the country*" embrace such as may be caused by acts of warfare committed *against carriers* by states or their citizens with which the country may be at war, and by *pirates* on the high seas. Thieves, robbers, insurgents and rioters are not included among "*public enemies*." Angell & Ames Corp. § 200.

**1361.** DILIGENCE: He is bound to use *diligence*, and permit no unnecessary delay in the transportation of goods intrusted to his care. Nor can he avail himself of the exceptions to his liability which the law has created, unless he is free from *negligence* and fault himself.

*Blackstock v. R. R. Co.*, 1 Bosw. 77; *Harmony v. Bingham*, 12 N. Y. 361; *Conger v. R. R. Co.*, 6 Duer N. Y. 375; *Reed v. Spaulding*, 30 N. Y. 664; *Wheeler v. R. R. Co.*, 12 N. Y. 345; *Behan v. Gr. Tr. Rwy.*, 11 Q. L. R. 304; N. Y. 264.

**1362.** NEGLIGENCE, as a common carrier ---

**1363.** That a *common carrier* cannot by contract relieve himself from liability for the loss of goods delivered to him for transportation, which has been occasioned by his own negligence or that of his agents or servants, or where such negligence has in any degree contributed to the loss; that it matters not what degree of negligence has been occasioned or contributed to the loss. A carrier can not lawfully stipulate for a slight degree of negligence than he can for gross negligence. (**1374.**)

*Michals v. N. Y. C. R. R.*, 30 N. Y. 664; *Reed v. Spaulding*, 30 N. Y. 660.

## PASSENGER CARRIERS.

**1363.** 1. "In regard to the transportation of passengers, they are not in any respect insurers, but are answerable for any injuries to their passengers against which the utmost skill and foresight could guard." (*Bowen v. N. Y. Cent. R. R. Co.*, 18 N. Y. 11, and cases there cited.)

2. "This responsibility embraces not only any want of care and foresight on the part of the immediate agents of the corporation, but also any defects arising from want of care or skill in the manufacture of the machinery or materials used in the structure or operation of the road, whether discoverable by any exercise of care and skill on the part of the immediate agents of the road or not." (*Hegeman v. West. R. R. Co.*, 13 N. Y. 9.)

*Dorr. v. N. J. St. Nav. Co.*, 1 N. Y. 485; 36 N. Y. 378.

3. "The carrier is also responsible for the bad conduct of its employees, if such employee is retained in the employ of the company." (*Rutherford v. Gr. T. R. R.*, 20 L. C. J., 5 R. L. 483.)

*Puchen v. La Comp. du Nord*, 8 L. N. 111; *Ingalls v. Bills*, 9 Metef. Mass. 1.

**1364.** If a common *carrier of passengers* and of goods and merchandise have reasonable grounds for refusing to receive and carry persons applying for passage, and their baggage and other property, he is bound to insist at the time upon such ground, if desirous of avoiding such responsibility. If not thus insisting, he receive passengers and their baggage or other property, his liability is the same as though no ground for refusal existed.

Civil Code L. C., § 1673; *Angell Car.*, § 125; 23 Vt. 186; 14 Pa. Sta. 48; 10 N. H. 181; 30 Miss. 231.

**1364a.** Equal diligence is required of the carrier as for goods, and the same liabilities are incurred by delays, unless the utmost diligence had been used. (*Williams v. Vanderbilt*, 18 N. Y. 223.) Where several carriers form a con-

tinuous line between two places, each carrying over a particular portion of the route, a contract by the owner of one part of the line, over the whole route, although a distinct passage ticket be furnished from each separate carrier over his portion, such owner may be held as contractor for the whole route—called a “through ticket”—the several coupons or tokens to be detached as its portion of the route is reached. (*Williams v. Vanderbilt, supra*; *Quimby v. Same*, 17 N. Y. 306.)

## PASSENGER BAGGAGE.

**1365.** To render the passenger carrier liable for baggage, it must be delivered to such carrier or his servant or agent, for receiving it, with proper notice of the purpose. If the passenger retains the baggage voluntarily, and assumes care of it, the carrier will not be responsible for any loss of it.

*Torrance v. Richelieu Co.*, 10 L. C. J. 335; 5 L. N. 71; *Tessier v. Gr. Tr. R. R.*, 3 R. L. 31; *Senecal v. Richelieu Co.*, 15 L. C. J. 1.

The placing of baggage in a stateroom duly assigned to the passenger on board of a steamboat, and from which it may be stolen, will not relieve the carrier from responsibility. It is not a ground for limiting the responsibility of a common carrier, when no interference is attempted with his control of the property carried, that the owner of the property accompanies it and keeps a watchful look-out for its safety.

*McDougall v. Allen*, 2 L. C. R. 321; *McDougall v. Torrance*, 4 L. C. J. 132; *Robson v. Hooker*, 3 L. C. J. 86; *Breton v. Gr. Tr. Ry.*, 2 R. C. 237.

**1366.** Passengers must call for their baggage at the end of the route, within a reasonable time, or the responsibility therefor of the carrier ceases. (*Leduc v. Griffiths*, 25 N. Y. 304.)

Where baggage was uncalled for on arrival, and was removed to the baggage-room where it remained several hours, when it was accidentally destroyed by fire. HELD: to be the owner's loss.

*Leduc v. Griffiths*, 25 N. Y. 304; *Jones v. Norwich Trans. Co.*, 50 Barb. N. Y. 132; *Roth v. Buff. Line Co.*, 34 N. Y. 548; *Hogan v. Gr. Tr. R. R.*, 2 Q. L. R. 142.

**1367.** Where a railroad company receives for transportation in cars which accompany its passenger trains property of a passenger *other than his baggage*, in relation to which no fraud or concealment is practiced or attempted upon its employees, it assumes with reference to the property the liability of a common carrier of *merchandise*. (**1369.**) But they are not bound to carry what is known as "express matter." (5 Am. Law Reg. 364)

**1368.** *Baggage* is held to be such articles of necessity and personal convenience as are usually carried by travelers, limited to such things in quantity, quality, kind and value, as might be reasonably supposed to be carried in a trunk or valise. It embraces such articles of apparel, ornamental and the like, as may be in daily use by travelers for convenience, comfort, or for recreation, as fishing or hunting implements. It has also been held to include jewelry carried as baggage, forming a portion of female attire, the family being on a journey.

Civil Code L. C., § 1674; *Cadwalader v. Gr. Tr. Ry.*, 9 L. C. R. 109.

A *watch*, carried in one's trunk; books for reading or amusement; a harness-maker's tools to the value of ten dollars, and a rifle, have all been held to be baggage. (*Merrill v. Grinnell*, 30 N. Y. 594, 611, 619.)

**1368a.** It has been held not to include *specie* beyond what the traveler might fairly expect to require for his expenses and necessary purchases for himself and family, including the replenishing of wardrobe, and calculating for such contingencies of sickness or accident as might not be considered altogether improbable. (*Little Miami R. R. Co. v. Eureka F. & M. Ins. Co.*, S. C. Ohio, 1881.)

**1368b.** Baggage of passengers checked through to destination over a number of connecting roads, the company become liable for the whole route. (3 N. Y. 37; 2 E. D. Smith, N. Y. 184; 7 Rich, S. C. 158.) Baggage check is equivalent to a bill of lading. (*Redfield Railways*, § 128.)

**1369.** Merchandise carried in trunks as *baggage*, without the knowledge of the carrier, is not protected as baggage. (**1367.**) *Marine Ins. Co. v. R. R. Co.*, Cincinnati Court. A trunk of jewelry samples is not baggage.

In Ohio, *carpenter's tools* to the value of fifty dollars, carried in a trunk, were found by a jury to be the reasonable tools of a carpenter, and were held to be baggage.

In the same State a *watch* worth ninety-five dollars was held to be baggage, and "the traveler's trunk a proper place to carry it."

Surgical instruments, in the case of a surgeon in the army, traveling with troops, constitute a part of his baggage.

**1370.** In *New York* it was held that the term baggage does not properly include *money* carried in an ordinary traveling trunk; nor any article usually carried about the person.

In *Illinois*, a pair of *duelling pistols* and a pocket pistol, in a carpet bag, were held to be baggage.

In *Tennessee*, a silver watch worth about thirty-five dollars, with medicines, hand-cuffs, locks, etc., worth about twenty dollars, were held *not* to be baggage.

**1370a.** If a passenger retains his baggage, or any portion of it, on his person or in his own hands, or within his sight, instead of delivering it to the carrier or his servant, the carrier is not liable, as carrier, for any loss or damage thereto. (**1365.**) (*Mudgett v. Bay State Co.*, 1 Daly N. Y. 151; *Torrance v. Richelieu Co.*, 10 L. C. J. 335.)

#### SLEEPING CAR COMPANIES.

**1370b.** While sleeping car companies are neither common carriers nor innkeepers, they are bound, as other bailees, to use ordinary care in the protection of passengers and their baggage while asleep in the car.

The question as to the liability of common carriers for lost articles, carried about the person or in the immediate possession of passengers during sleeping hours, has often arisen.

but the decisions in actions against ship and steamboat companies are by no means harmonious. The general doctrine in such cases, including sleeping cars, is as given in the case of *Diche v. Woodruff Sleeping Car Co.*, Indianapolis Sup. Court, Jan., 1880:

"The fact that articles of money lost or stolen from the passenger were carried by him about his person or under his personal supervision, does not exonerate the sleeping car company from the duty to use ordinary care in respect to them; but the right of recovery is limited to such articles as it is usual and proper for a traveler to carry about his person, and to such a reasonable amount of money as it may be proper for him to carry for his traveling expenses."

*Pullman Car Co. v. Pollock*, S. C. Texas; *Crozier v. Boston, etc., Co.*, 43 How. Pr. N. Y. 466; *Blinn v. South. Pullman Car Co.*, Central Law Jour. 59; 11 Albany Jour. 149; 13 *id.* 221; 43 N. Y. S. C. 457.

## RAILWAY COMPANIES

### AS COMMON CARRIERS.

**1371.** HELD, in Illinois: "That *railroads are regarded as common carriers* resting under a duty to transport such articles as may be delivered to them in the course of their business, and their liability commences when the goods are delivered to their agents authorized to receive them." (3 *Ill. Law Jour.* 675; Civil Code L. C., § 1675.)

The obligations and liabilities of a *common carrier* are not dependent upon contract, though they may be modified and limited by contract; they are imposed by the law, from the public nature of his employment.

The liability of a *common carrier* of goods and merchandise attaches when the property passes, with his assent, into his possession, and is not affected by the carriage in which it is transported, or the fact that the carriage is loaded by the owner. The *common carrier* is an insurer of the property carried, and upon him the duty rests to see that the packing and conveyance are such as to secure its safety.

**1372.** WHEN LIABILITY CEASES.—HELD: "That, the liability of the *common carrier* commencing with the receipt of the goods, it necessarily continues until they are delivered by him at their place of destination, where the owner or consignee is bound to be present and receive them, and pay the freight if it has not been previously paid; and if he is not present to receive the goods, they can be placed in a safe and sufficient warehouse,

when the *liability of the carrier ceases* and that of the warehouseman commences. (1375.)

10 Metc. Mass. 472; 27 N. H. 86; 4 Term R. 581; 2 Maule & Sel. 172; 2 Kent Comm. 591, 592; Story Bail., § 444.

**1373. EXTENT OF LIABILITY:** The receipt of goods by *common carriers* is all that is necessary to fix their *liability*, so that if a parcel be delivered to a railroad company marked for any place off their route, and they receive it to carry, they are bound by this rule of the common law, if the parcel be lost, to account to the owner for its value. the contract of the shipper is with the owner in whose custody he placed the parcel. (1357.)

**1373a. FREIGHT OVER DIFFERENT RAILROADS.—HELD:** "That consignees of goods by railroads are not required in case of loss or damage, to look for remuneration to any other party than the one to which they delivered the goods." (1364a.) Hodges Railw. 615; 8 Mees & Wel. 6. Exch. 421; 2 Eng. L. & Eq. 195; 18 *id.*

In the United States each company is only held liable over its own road, except where each of the several companies give bills of lading for the entire route.

20 Vt. 186; 6 Hill N. Y. 153; 22 Conn. 502; 1 Gray Mass. 502; 4 Am Law Rep. 254.

**REMOVAL OF COMMON LAW LIABILITY.—HELD:** "That the receiving company can, at the outset, remove itself from its common law liability by a special and definite agreement."

Wells v. Hud. R. R. Co., 24 N. Y. 181; Perkins v. Same, *id.* 196; Merch. Ins. Co. v. Cables, 20 N. Y. 173; Boswell v. Hudson R. R. Co., 5 Bosw. 699; Dorr v. N. E. St. Nav. Co., 11 N. Y. 485.

**1374. NEGLIGENCE.—HELD:** "That it was the duty of the company to provide reasonably safe depot buildings in which freight and property transported over its road might be securely stored when convenience and necessity required that such property should be placed in store." (1377.)

Samuel v. Edmonstone, 1 L. C. J. 86; Morgan v. N. Y. Cent. R. R., 39 N. Y. 561.

#### AS A WAREHOUSEMAN

**1375. NEGLIGENCE AS A WAREHOUSEMAN.—HELD:** "That the court below properly instructed the jury, if the depot was burned by reason of the spontaneous combustion of wool-wool stored therein, and by the exercise of that care and caution which ordinarily prudent men exercise in the care of their own property, the servants in charge of the depot would have discovered such dangerous article, and so stored it that, in case of spontane-

ous combustion, it would not have endangered the entire contents of the building; and if they failed so to do the defendants were chargeable with negligence as warehousemen."

**1376. LIABILITY AS WAREHOUSEMAN.**—HELD: "That the company, as a warehouseman, was liable for all damages caused to the wool by the want of ordinary care and diligence in storing and keeping it."

The court said further:—

"We know of no reason in law or public policy which requires any other or different rule of liability to be applied to *railroad companies, when acting as warehousemen*, than is generally attached to that character of bailments. *Warehousemen* are responsible for ordinary care and diligence in the discharge of the duties incident to the business in which they are engaged, and the *railroad company* was bound to exercise the same degree of diligence. If the company is unwilling to assume that responsibility, it should, when the transit is ended, deposit the property in the warehouse of a third party." (1354.)

It was HELD, further: "That a railway company might be liable upon the same lot of wool, as to a portion, as *carrier*, and, as to the rest, might be liable only as a *warehouseman*."

McDonald v. Western Ry. Co., 24 N. Y. 407; 24 N. H. 71.

**1377.** Where a railway company placed goods in one of its warehouses located so as to be liable to be reached—and was reached, by an extraordinary rise of a neighboring river, by which means the goods were damaged:—

HELD: "That the company was liable on the ground that it was *negligence* to place goods in the warehouse, although it was believed safe." The court further said: "If, by the carrier's *negligence* property committed to him is brought under the operation of *natural causes* that work its destruction, or is exposed to such loss, he is responsible." (1374.) (Michaels v. N. Y. Cent. R. R., 30 N. Y. 564.)

**1378. DELAY:** In the United States Court the jury in the case of Charles W. Marsh against the Michigan Central Railroad Company returned a verdict of \$2,550.70 for the plaintiff, to pay for goods *delayed* in transportation, and thus meeting with destruction by the burning of the defendant's warehouse at Detroit. (1361.)

Pontbriand v. Gr. Tr. Ry, M. L. R., 3 S. C. 61; Delorme v. Can. P. Ry., 11 L. N. 106; Civil Code L. C., § 1678; Reed v. Spaulding, 30 N. Y. 630; Harmony v. Bingham, 12 N. Y. 99; Conger v. Hud. R. R. Co., 6 Duer N. Y. 375.

## PARTNERSHIP.

**1379.** In the adjustment of losses it not unfrequently becomes important to know who are and who are not *partners* in interest as claimants. The following will sufficiently illustrate this point to enable the adjuster to judge of the nature of the interest of the claimants as a firm, or as individuals, under the stipulations of the policy :—

**1380.** The essential feature of a *partnership* is a community of interest in the profits and losses of the business. (Post v. Kimberly, 9 Johns. N. Y. 470; Collyer Part. § 2; Herbert v. Vallée, S. C. M., Feby, 1890.)

**1381.** *Partners* are *OSTENSIBLE* : those whose names appear as members of the firm, and who are such in reality. (Crawford v. Collins, 45 Barb. N. Y. 269.)

**1382.** Or, *NOMINAL* : those who are *ostensibly* partners, but who have no interest in the firm or business. (Story Part. 241, 242; Smith's Lead. Cases 1190.)

**1383.** Or, *DORMANT* : those whose names do not appear in the firm or its business transactions. (3 Kent Comm. 68; Davis v. Allen, 3 N. Y. 168; Collyer Part. § § 120, 536.)

**1384.** One who is entitled to *one-third of the profits* of business, *as profits, is a partner*, authorized to bind the firm as to a third party; and he is personally liable to third parties for its indebtedness, though he may contribute to the joint fund only his personal services.

9 Johns. N. Y. 470; 15 Wend. N. Y. 187; 4 Cow. N. Y. 282; Herbert v. Vallée, S. C. M., Feby, 1890.

**1385.** One engaged as a clerk or agent may receive *as compensation* for services *thirty-three and one-third per cent. upon profits as a basis of salary*; but he is *not a partner*, nor liable to third parties for partnership indebtedness.

Boutellet v. Ins. Co., 51 Vt. 4; Collyer Part. § 35, 44; 6 Metc. Mass. 92; 10 id. 303; 12 Conn. 69; 3 Kent Comm. 34.

**1386.** The acts and contracts of one *partner*, fairly within the usual business of the firm, are treated in law as the acts and contracts of the firm. The authority of each *partner* in this respect is very broad, each being considered the agent of the other or others.

Story Part. 1; Collyer Part. § 185; 14 Mees & W. Ex. 11, Lindley Part. 192-195; Civil Code L. C., § 5636.

**1387.** A *partner*, as such, has an insurable interest in the entire stock; and has a right to insure his partner's interest as well as his own. But if the insurance be expressed to be on his sole account, it must be limited to his individual share.

2 Caines N. Y. 203; 2 Johns. N. Y. 329; Ins. Co. v. Hall, 12 Mich. 202; 2 Duer Ins. 22, 24; Irving v. Excelsior Ins. Co., 1 Bosw. 507; 1 Philips Ins. 196, § 380, and authorities cited; Collyer Part., § 438; Story Part., § 102.

The interest of each *partner* in the assets of the firm is not a title to any aliquot part, as a half or a fourth. Each *partner* being liable *in solido* for the engagements of the partnership, has a right, termed his equity, to have the firm assets applied first to the payment of the firm debts—an equity through the instrumentality of which the partnership creditors have a priority over separate creditors, to be paid out of the partnership funds. (Story on Part., § 97; Collyer Part. 65, 66.)

The interest of a *partner*, therefore, is only such a proportion of the capital and profits as, by the original articles or agreement, he may be entitled to receive after all of the debts are paid and the affairs of the concern liquidated and wound up; hence, each *partner* has an insurable interest in the entire stock, and on receipt of payment for a loss on insurance he must account therefor to the partnership.

Murray v. Bogart, 14 Johns. N. Y. 318.

**1388.** The adjudications touching the effect of a transfer of interest among partners, under insurance, have been very contradictory, depending in some instances upon the wording of the alienation clause. (**1085.**) The subject will be considered under two phases:—

*First.* A transfer of interest among the partners themselves, one member selling out to the others.

*Second:* Where one partner sells to a stranger, thus introducing a new member into the firm.

*First:* Alienation among partners does not avoid the policy.

**1389.** Under the *first* head, it is held generally in New

York that such change does not avoid the policy; so also in Georgia, New Hampshire, Alabama, and Lower Canada. Also in Tennessee and Ohio, in the absence of the alienation clause.

*Wilson v. Merc. Ins. Co.*, 16 Barb. N. Y. 511; 1 Rob. N. Y. 501, affirmed 33 N. Y. 405; 19 Abb. Pr. 325; Revised Code, Georgia, § 2766; Civil Code L. C., § 2577; *Hoffman v. Aetna Ins. Co.*, 32 N. Y. 405, and cases there reviewed; *Burnett v. Eufaula Home Ins. Co.*, S. C. Ala., 1872; 2 Ins. Law Jour. 134; 50 N. H. 297; *Hobbs v. Memphis Ins. Co.*, 1 Sneed Tenn. 444; *West v. Citizens Ins. Co.*, 27 Ohio; *Powers v. Guardian Ins. Co.*, S. J. C. Mass., 15 Ins. Law Jour. 209.

**1390.** PER CONTRA: A y alienation among partners voids the policy.

*Gordon v. Miami Val. Ins. Co.*, Ohio, citing *Balto Ins. Co. v. McGowan*, 16 Md. 47; *Buckley v. Garrett*, 47 Penn. St. 204; *Howard v. Albany Ins. Co.*, 3 Denio N. Y. 301; *Drehrer v. Aetna Ins. Co.*, 18 Mo. 128; *Keely v. Niagara F. I. Co.*, 16 Wis. 523; *Dix v. Merc. Ins. Co.*, 23 Ill. 272; 1 Parsons Ins. 56, 57, 58; *Biggs v. N. C. Home Ins. Co.*, S. C., N. C., 1883; *Holloway v. State Ins. Co.*, S. C. Iowa, 1884; *Flanders Ins.* 428; 2 Ins. Law Jour. 842; 2 Peters U. S. 26; 6 Casey Penn. 311; 11 Wright Penn. 204; 23 Ind. 179; 51 Maine 110; 10 Ohio 347; *Tillou v. Ins. Co.*, 7 Barb. N. Y. 570; *id.* C. A., 1 Selden N. Y. 405; *Murdock v. Ins. Co.*, 2 Comst. N. Y. 210; *Girard F. & M. Ins. Co. v. Hebbard*, S. C. P. 1881, 10 Ins. Law Jour. 425; *Ins. Co. v. Deale*, 18 Md. 52; *Shertzer v. Ins. Co.*, 46 Md. 510; *Finly v. Lycoming Ins. Co.*, 30 Penn. St. 311.

*Second*: Sale by one partner to a stranger, outside of the firm, voids the policy.

*Hobbs v. Memphis Ins. Co.*, 1 Sneed Tenn. 444; *Firemen's Ins. Co. Balt. v. Floss et al.*, Md. C. Ap., June, 1887; *Wilsford v. Wood*, 1 Esp. 182, 183; *Ord et al. v. Postal*, 3 Camp. 340 n.; *Ege v. Kyle*, 2 Watts Pa. 222; *McGregor v. Cleveland*, 5 Wend. N. Y. 475; 2 Greenleaf Ev., § 478. PER CONTRA: *Drennen v. London Assur. Corp.*, U. S. S. C., 13 Ins. Law Jour. 38. The S. C. Minn., declared the insurance void. On appeal the U. S. S. C. overruled the decision, and declared the policy valid.

**1391.** The Supreme Court of New York has decided that as the statute makes the use of the word "Co.," in a firm name where there is no partner to represent it, a misdemeanor; contracts made in such firm name are void. (Laws of 1883, Ch. 231.)

*Clark v. Ins. Co.*, 17 Mo. C. Ap., 1879; *Robinson v. Magarity*, 28 Ill. 426; *Brennan v. Partridge*, S. C. Minn., 1 West. Repr. 542; 1 Chitty Pl., 16 Ed., 47 n. g.

**1392.** Policies are sometimes written with the phrase "as now constituted," representing that, while the old firm name

is retained, some one or more of the parties may have retired, or new members entered into the firm. Under this phrase the parties actually constituting the firm at the time of the insurance are the parties covered by the policy.

## PAROL AGREEMENTS.

**1393.** A parol contract for insurance differs from an executed policy in the fact that, in case of the latter, the holder can sue in a court at law, while under the former he is compelled to go into a court of equity with his case. (*Taylor v. Phoenix Ins. Co.*, S. C. Wis., 8 Ins. Law Jour. 854.)

The words *verbal*, *parol*, and *oral* are very frequently, though erroneously, used as synonymous terms. Their *legal* significations are as follows:—

**1394. VERBAL:** *Expressed in words*, whether written or spoken. It is inaccurate to distinguish *verbal* from *written*, as contracts are equally *verbal*, whether the words are written or spoken.

**1395. PAROL:** *By words*, including *verbal*, *oral*, and *written*, without seal. *Parol evidence* is evidence verbally delivered by a witness.

**1396. ORAL:** *By word of mouth*; spoken, not written.

*Verbal* and *oral* contracts are simple contracts, or contracts not of specialty or record.

*Written contracts* are those evidenced by writing. The only distinction between *verbal* and *written* contracts is in the mode of proof.

**1397.** Whether a contract of insurance will be valid, except in writing, is not definitely settled. In Ohio, Georgia, and Louisiana, such contracts are required to be in writing; in New York, Alabama, and Lower Canada, *parol contracts* are valid. (**113** *et seq.*)

*Cockrell v. Ins. Co.*, 16 Ohio R. 149; *Walden v. Ins. Co.*, 12 La. R. 135; *Civil Code L. C.*, § 2481; *Perkins v. Ins. Co.*, 4 Wend. N. Y. 645.

The validity of parol contracts in the Province of Quebec is doubted. See *Montreal Ins. Co. v. McGillivray*, 8 L. C. R. 201, 2 L. C. J. 221; *Moore's Priv. C. Cases* 89; 9 L. C. R. 488.

**1398.** *A contract cannot exist partly in writing and partly by parol.* Agreements made prior to the issue of the policy, and not appearing therein, are held to have been waived. (1407.)

White v. Ashton, 51 N. Y. 280; Bigelow Estop. 437-441; White v. Walker, 31 Ill. 437; Faxton v. Faxton, 28 Mich. 159; Bell v. Ins. Co., 5 Rob. La. 423; Union Mut. Life v. Mowry, U. S. C. C., Oct. Term, 1877; 11 Paige Chy. N. Y. 278.

The principles governing *parol agreements* may be stated as follows:—

**1399.** If made by an agent, it must be within his authority, in order to bind his principal.

Hartford Ins. Co. v. New York, 57 N. Y. 180; Ins. Cos. v. Colt, 20 Wall. U. S. 560; Ins. Co. v. Howard Ins. Co., 19 How. Pr. N. Y. 318; Comm. Union Assur. Co. v. State et al., S. C. Ind., 17 Ins. Law Jour. 333; Perkins v. Wash. Ins. Co., 6 Johns. Chy. N. Y. 485; Same on Appeal, 4 Cow. N. Y. 645.

**1400.** *Agreements for insurance*, like other contracts, require the mutual assent of the parties; and remain in force until such a policy as is agreed for is made out, or the claim for it has been waived. (1413.)

Kelly v. Com. Ins. Co., 10 Bosw. N. Y. 82; Bragdon v. Appleton Ins. Co., 42 Me. 359; Baxton v. Massasoit Ins. Co., 13 Allen Mass. 320; Port v. Etna Ins. Co., 45 Barb. 351; Com. Mut. Ins. Co. v. Union Ins. Co., 19 How. Pr. N. Y. 318; 4 Ins. Law Jour. 405; Revere F. I. Co. v. Chamberlain, S. C. Iowa, Mar., 1881.

**1401.** A party is not legally bound to the full extent of *all* the ordinary risks by an *agreement to make a policy*, the same being executory on both sides, without some memorandum signed by him to that effect. (1408.)

1 Philips Ins. 11, § 14, and authorities cited.

**1402.** An *offer* to insure does not constitute or create a contract; and may be withdrawn at any time before acceptance.

Eliason v. Henshaw, 4 Wheat. 225; 1 Philips 21, § 21; 3 Benn. F. I. Cases 94; 1 Parsons Ins. 37 n.

**1403.** A *written* offer by the insurers, of terms on which they will insure, where the subject, risk and terms are adequately specified, becomes binding on the dispatch of an

acceptance, provided such acceptance reaches them prior to a letter countermanding it, and within a reasonable time, or within the time prescribed. (873.)

1 Phillips Ins. 18, § 18; Adams v. Lundsell, 1 B. & Adol.; Taylor v. Merch. Ins. Co., 9 How. N. Y. 596; Mactier v. Frith, 6 Wend. N. Y. 164; Hallock v. Ins. Co., 3 Dutch. N. J. 645.

A *parol* acceptance of a written contract for insurance is a binding contract, in the absence of any statute requiring such contracts to be in writing.

4 Ins. Law Jour. 694, 680; 3 Comst. N. Y. 266; 52 Barb. N. Y. 626; 11 Paige Chy. 547.

*Unstamped letters* have no effect. (Blake v. Hamb. Brem. Ins. Co., S. C. Texas, 13 Ins. Law Jour. 151; *Id.* appeal, 17 *id.* 436.)

*Mailing of letter duly stamped* affords no legal presumption of its having been received. (18 Ins. Law Jour. 307.)

*Registering of letter*: While Government does not thereby become responsible, it affords means of proving the sending of the letter, but not of the contents, which must be proved *aliunde*. (McKenna v. State Ins. Co., S. C. Iowa.)

**1401.** An *agreement to insure* is binding upon the underwriter; but an acceptance of the offer *as made*, without any change, must be signified, with a tender of the premium, within a reasonable time, if such time be not limited by the *agreement*, or the *agreement* will be considered void.

1 Phillips Ins. 13, § 16; Anderson v. Excelsior Ins. Co., 27 N. Y. 216; Ins. Co. v. Duffy, 2 Kans. 347.

Any qualification of, or departure from, the terms of the *agreement* by the acceptor, or any conditional or contingent acceptance, will annul the contract. (1 Phillips Ins. 21, § 21.)

A mere determination, or determination without action, can never be an acceptance.

**1401a.** A merely executory *oral agreement* for a policy, so long as nothing is done on either side towards executing it, will not be binding. But where the premium has been paid, and the *oral agreement* has been in all respects exe-

cuted by the applicant, it will amount to conclusive evidence, by admission of the underwriters, of the *constructive* delivery of a policy containing the usual provisions, and that the same is in their office subject to the order of the insured, and will preclude any proof to the contrary on their part. (946.)

1 Phillips Ins. 11, § 14; Goodall v. Ins. Co., 25 N. H. 169; Chase v. Ins. Co., 22 Barb. 527; Whittaker v. Ins. Co., 29 Barb. 312; 4 Ins. Law Jour. 940; 5 *id.* 514; 5 Penn. St. 329; 12 Barb. N. Y. 595.

**1405.** A court of equity will enforce a contract to make a policy of insurance, and treat that which was agreed to be done as if actually done. The same court may compel the delivery of a policy agreed and contracted for either before or after a loss, and may enforce payment of loss under such a contract before the delivery of the policy. (941.)

Perkins v. Ash. Ins. Co., 4 Wend. N. Y., 645; Carpenter v. Ins. Co., 4 Sandf. Chy. 408; Chase v. Ins. Co., 12 Barb. N. Y. 595; Kohne v. Ins. Co. N. Am., 1 Wash. C. C. R. 93; Goodall v. Ins. Co., 5 Fost. N. H. 169; Neville v. Ins. Co., 190, 452.

**1406.** The plaintiff applied to the agent of the defendants for an insurance on his house, and the agent agreed to insure it for a certain sum, which sum plaintiff immediately paid to agent. The agent promised to give the policy to the plaintiff in a few hours, but it was never delivered. During the term for which the insurance was agreed upon, the house was burned. Action was brought for recovery of the insurance:

**Held:** That the *parol contract* for insurance upon complainant's house was valid, and could be enforced without a policy; that the failure to issue a policy by the company after the payment of the premium could not be taken advantage of by it in a court of Equity; that the action of the company's local agent amounted to a waiver of the provisions in the policy as to strict proofs and suit within one year.

Hamilton v. Lycoming Ins. Co., 5 Penn. Sta. 339; Audubon v. Excelsior Ins. Co., 23 N. Y. 216.

**1407.** In cases where *verbal* contracts to insure have been held binding, such contracts contemplated the issuing of a policy: hence, the agreement may be called a contract to issue a policy, rather than a contract of insurance. Such an agree-

ment is, in fact, a contract that a policy of insurance shall be made according to the form in ordinary use by the agent's company, unless otherwise specified in the agreement.

*Audubon v. Excelsior Ins. Co.*, 27 N. Y. 216; 3 *Ins. Law Jour.* 671.

**1407a.** *Verbal agreements* to insure upon certain terms and conditions, prior to the issuing and acceptance of the policy, are held to be waived unless inserted in the contract. (1398, 1426.)

*Higginson v. Dall*, 13 Mass. 96; 1 *Greenleaf Ev. c.* 15, § 275, 315; *Philbrook v. Ins. Co.*, 37 Me. 137; *Howard Ins. Co. v. Bruner*, 21 Penn. St. 50; 1 *Phillips Ins.* 44, § 66; *id.* 75, n. 1; *Ball v. West F. & M. Ins. Co.*, 5 Rob. La. 423; *Phoenix F. I. Co. v. Gurnee*, 2 Paige Chy. N. Y. 278; *Eyre v. Ins. Co.*, 6 Whart. Pa. 247; *Hutchinson v. Bowker*, 5 Mees. & W. Exch. 542; 8 *id.* 823; 2 *Valin's Comm.* 44; *Todd v. Liv. & Lond. & Globe Ins. Co.*, 18 U. C. Q. B. 192; *Harris v. Cole*, 18 Ohio 116; 3 *Benn F. I. Cases* 116; 4 *id.* 208, 9; *Union Mut. Life Ins. Co. v. Mowry*, U. S. S. C., 7 *Ins. Law Jour.* 203; *Franklin Ins. Co. v. Martin, C. E. & A., N. J.*, 8 *Ins. Law Jour.* 141, and authorities cited.

**1408.** A *memorandum* that a subject "is insured," or "shall stand insured," or shall be "held binding," means that it is insured, or shall be so, according to the ordinary form of policy used in the office where the *memorandum* is made.

1 *Phillips Ins.* 12, § 15; *Ins. Co. v. Mordecai*, 22 How. 111; *Shaw's Ellis Ins.* 55 n.

#### LABEL OR SLIP.

**1409.** In marine practice, where a *memorandum* of the agreement is made and entered upon the books of a company in which the material parts of the policy are inserted, and signed by both parties, it is termed a *label* or *slip*. And where the policy is ambiguous, reference is made to the *label* to make it clear. (1 *Arnould Ins.*, subject 48.)

**1410.** The usual condition of a *written* policy stipulating for a payment of premium forms no part of a *parol agreement* unless expressly adopted by the parties.

**1411.** "A provision in a charter requiring that 'all policies and contracts of insurance shall be subscribed by the president,' relates only to an executed insurance, and does not abridge the common law right to make an *oral* executory contract for insurance."

## AD INTERIM RECEIPT.

**1412.** A binding receipt for money paid as premium upon an insurance, provisionally granted by an agent not authorized to issue policies, under the form of policy usually issued by the office, but subject nevertheless to the approval of the company, to be notified to the holder thereof, within a certain number of days therein named, after which time the receipt becomes inoperative by its own terms, unless sooner acted upon by the company and the insured duly notified of such action, is a valid insurance for the number of days specified in the receipt, unless sooner revoked, and the unearned portion of the premium returned to the insured.

*Goodfellow v. Times & Beacon Ins. Co.*, 17 U. C. Q. B. 411; *Heaton v. Beacon Ins. Co.*, 16 U. C. Q. B. 316; *Langell v. Mut. Ins. Co. of Prescott*, 17 U. C. Q. B. 524; *Mann v. Western Assur. Co.*, 17 U. C. Q. B. 190.

1. Where the policy issued *did not cover all of the goods included* in the receipt, insured is entitled to recover for property omitted. (*Wyld v. Liv. & Lond. & Globe Ins. Co.*, 23 Grant Chy. 442.)
2. *Neglect of agent* to forward application—limitations not operative. (*Hawke v. Niag. Dist. Mut. Ins. Co.*, 23 Grant Chy. 139.)
3. *Right of action* accrues at once after a loss, under interim receipts. (*Goodwin v. Lancashire F. & L. Ins. Co.*, 18 L. C. J. 1, C. R., 16 L. C. J. 298.)
4. Where the policy is *under seal*, interim receipt not under seal is invalid. (*Kelly v. Isolated Risk & Ins. Co.*, 26 U. C. C. P. 299.)
5. *Notice of rejection of application* by the company, sent by mail, and not received by the insured until after a loss, is too late; the insurance remains binding upon the company. (*Goodwin v. Lancashire F. & L. Co.*, 18 L. C. J. 1; *Tough v. Provincial Ins. Co.*, 20 L. C. J. 168.)
6. *Payment of premium* is not established by holding an interim receipt. (*Canada F. & M. Ins. Co. v. Keroack*, 2 L. N. 272.)

7. *The mere lapse of the thirty days' limit* in the receipt without the issuing of the policy, did not put an end to the insurance under the receipt. (*Turgeon v. Citizens Ins. Co.*, 9 Q. L. R. 75; 23 Grant Chy. 442.)
8. *Not covered by the Ontario Statutory conditions.* In the decision in the case of *Parsons v. Queen Ins. Co.*, Nov. 26, 1881 (to be found as an appendix to the Ontario Ins. Report, A. D. 1881, p. 75), the PRIVY COUNCIL came to "the conclusion that the interim note in question is not a policy of insurance within the meaning of the Act. (Ontario Statute.)"

## BINDING SLIP.

**1413.** What are familiarly known to fire underwriters in the City of New York as "Binders" are, in effect, similar to the Interim receipt, being, as defined by Judge Depue (of the U. S. C. C. N. J.):

"Merely an agreement for temporary protection until the terms of the contract can be agreed upon and the policy prepared. It presupposes a further agreement on the part of the insurer, for a permanent and definite contract, within a reasonable time, and it becomes the duty of the insured within such time to complete the arrangements." (*Coe & Co. v. Wash. F. & M. Ins. Co.*, U. S. C. C., D. N. J., 17 Ins. Law Jour. 717.)

*Mohr Distilling Co. v. Ins. Co.*, U. S. C. C., Balto., 12 Ins. Law Jour. 931; *Ins. Co. v. Johnson*, 23 Penn St. 92; *Barr v. Ins. Co. N. A.*, 8 Ins. Law Jour. 79, 109; 16 *id.* 236.

**1414.** A policy contained the following clause: "The insurance in this application is to take effect when approved by ....., the general agent."

HELD: That the contract was binding until a return of the premium note and a cancellation of the policy. (See authorities *supra*.)

**1415.** When the policy has been executed and accepted, any subsequent *oral* or *parol* agreement by the agent, to change or alter any of the conditions or stipulations of the contract, is *null and void until indorsed upon the policy* and duly signed by the agent, in accordance with the conditions of the policy, which conditions must control *all* agreements, *oral* or *parol*, connected with such policy subsequent to its subscription and acceptance by the insured. (**1407a.**)

Earle et al. v. Westchester F. I. Co., S. O. Mich., 5 Ins. Law Jour. 64; 16 Gray Mass. 438; 10 Bosw. 81; 27 N. Y. 216; Baxter v. Massachusetts Ins. Co., 13 Allen Mass. 320; Patterson v. B. Franklin Life Ins. Co., 5 Ins. Law Jour. 376; Putnam v. Home Ins. Co., 7 Ins. Law Jour. 550; Linsley v. Lovely, 26 Vt.; Weeks v. Lycoming Ins. Co., U. S. C. C. Vt., 7 Ins. Law Jour. 532.

**1416.** HELD: The rule, "that *written* agreements, unambiguous in their terms, *are not to be varied or explained by* PAROL, is so old, so well established, and so consonant with reason, that it may be regarded as inflexible."

Westchester F. I. Co. v. Earle et al., 5 Ins. Law Jour. 61.

**1417.** The removal of certain insured property to a new location without the consent of the insurer or his agent having been *first indorsed* upon the policy, which made such indorsement of consent a condition precedent to any change, will avoid the policy under its terms from and after such removal.

Date v. Gore Dist. Mut. Ins. Co., 15 U. C. C. P. 175; Hamilton v. Br. America Assur. Co., 13 *id.* 99; Lomas v. Same, 23 U. C. Q. B. 310; Curry v. Conn. Ins. Co., 10 Pick. Mass. 535.

## EVIDENCE.

### AS TO PROOF OF LOSS.

**1418.** A statement of the insured, in a claim for loss with affidavit attached, is not admissible as *conclusive* evidence of the amount of loss. The policy in itself is neither proof of the existence nor the value of the property at risk under the insurance. (16 Ins. Law Jour. 208.)

*Affidavit*, account of loss, and other preliminary proofs, are simply evidences *that* the requirements of the policy have been complied with in that respect; but are not admissible as to the amount of loss.

"They are not even *prima facie* evidence to the jury of the quantity or quality of the goods lost. The insured cannot thus prove the particulars or extent of his loss by his own *ex parte* statement, even under oath." (Commonwealth Ins. Co. v. Sennette, 5 Wright Pa. 16; 8 *id.* 269.)

"It was clearly improper to send such papers out with the

jurors to be examined by them in their deliberations. It would be error to permit the insured to give them in evidence to the jury on the trial, and the error was greater in permitting the jury to consider the several averments therein, without their having been given in evidence." (*Kittaning Ins. Co. v. O'Neill*, S. C. Pa., 15 *Ins. Law Jour.* 303.)

*Ins. Co. v. Lawrence*, 4 Metc. Mass. 9; *R. R. Co. v. Winslow*, 63 Ill. 219; *Lycoming F. I. Co. v. Schreffler*, 6 Wright Pa. 188.

Such affidavit, however, is evidence against the claimant, and estops him from denying in a subsequent suit any of the material facts therein stated.

*N. Y. Cent. Ins. Co. v. Weston*, 23 Mich. 482; *N. Am. F. I. Co. v. Ziegler*, 63 *Ins.* 464; *Continental Ins. Co. v. Hellman*, 9 *Ins. Law Jour.* 91; *Browae v. Clay F. & M. Ins. Co.*, S. C. Mo., 8 *Ins. Law Jour.* 431.

**1419. FRAUD:** When the intent to defraud is charged, the policy is the best evidence for the insurer to show that the property was insured; and the records of the company are not evidence, without previous notice to the insured to produce the policy. (598), and authorities there cited.

**1420.** Where an insurance company is informed, after examination by its adjuster, soon after the loss, of certain breaches of warranty by the insured, and does not then claim a forfeiture, but allows successive proofs of loss to be made, to which it objects on various grounds of form, such action of the company will constitute a waiver of forfeiture for the breaches of warranty referred to. (*Cobbs v. Fire Association*, 17 *Ins. Law Jour.* 868.)

**1421.** Over-statements of value of goods destroyed, not fraudulently made in the proofs of loss, do not vitiate the policy. (*Towne v. Springfield F. & M. Ins. Co.*, 17 *Ins. Law Jour.* 281.)

## EXPERTS.

Experts are "persons instructed by experience."

**1422.** As a rule witnesses must state facts, and not draw conclusions, or give opinions. "Cases where opinions of wit-

nesses were allowable constitute exceptions to the general rule." That "on questions of value, a witness must often be permitted to testify to an opinion as to value; but the witness must be shown competent to speak upon the subject. He must have dealt in, or have some knowledge of the article concerning which he speaks."

*Steinbach v. Ins. Co.*, C. A. N. Y., 2 Ins. Law Jour. 815; *Harper v. Ins. Co.*, 17 N. Y. 194; 22 *id.* 441; *Terpenning v. Ins. Co.*, N. Y. C. A., 6 Ins. Law Jour. 9; *id.* 166, § 42; *Fowler v. Ins. Co.*, 74 N. C. 89.

**1423.** In regard to the admissibility of the testimony of underwriters, policy-brokers, and others skilled in the business of insurance, as to their *opinions* of the materiality of representations or concealment, the authorities are conflicting.

CONTRA: *Lewis v. Burlington Ia. Ins. Co.*, S. C. Iowa, Mar., 1887; *Home Ins. Co. v. Weide*, U. S. S. C., May, 1871; 1 Phil. Ev. 290; *Lincoln v. R. R. Co.*, 23 Wend. N. Y. 433; *Brill v. Flagler*, *id.* 354; *Norman v. Wells*, 17 *id.* 136; *Lamoure v. Caryl*, 4 Denio N. Y. 370; *Morehouse v. Matthews*, 2 Comst. N. Y. 574; *Clark v. Baird*, 5 N. Y. '83.

2. The weight of authority, however, is in favor of the admission of such evidence, upon the admitted and well-known maxim, "*Cuique in sua arte credendum est.*" (651.)

IN FAVOR: *Devereux v. Sun Fire Office*, S. C. N. Y., 1889 (overruling 7 Wend. 72); *Quin v. Natl. Ass. Co.*, 1 Jones & Carey, 316; 1 Benn. F. I. Cases 702; *Bardwell v. Ins. Co.*, S. J. C. Mass., 6 Ins. Law Jour. 413; *Standard Co. v. Triumph Ins. Co.*, N. Y. C. A., 5 Ins. Law Jour. 504; *Hill v. Home Ins. Co.*, S. J. C. Mass., 9 Ins. Law Jour. 814; *Lycoming F. I. Co. v. Jackson*, 83 Ill. 302, 6 Ins. Law Jour. 305; *Woodruff v. Imperial F. I. Co.*, N. Y. C. A., 1880, 10 Ins. Law Jour. 125.

3. Chancellor KENT says:—

"Both the weight of authority and the manifest reason of the thing are in favor of the admission of the evidence." (2 Kent. Comm. 258, n. 3; 3 *id.* 284.

4. Judge DUER says:—

"It is a mistake to suppose that, on such a question, all persons of ordinary understanding, when the facts are ascertained, are competent to draw the proper inferences from known facts; this is the proper office of professional skill and tact which are only acquired by previous study and experience." (2 Duer Ins. 682.)

5. It is held in Ohio that such evidence is proper, and further:—

"That 'it is *not true*, as a legal proposition, that *no one but an expert* can give an opinion to a jury.' From the very necessity of the case, testimony must occasionally be a compound of fact and opinion." (Franklin Ins. Co. v. Cobb *et al.*, S. C. Ohio, 1869.)

**1423a.** The *general rule* as to the admission of evidence of this character is that the *opinions of experts* are admissible, when the subject-matter of inquiry "so far partakes of the nature of a science as to require a course of previous study to acquire a knowledge of it." And then, only when necessary for the enlightenment of the jury upon some particular point.

Smith's Lead. Cases 544; 2 Kent. Comm., 5th Ed., 258 n; 2 Duer Ins. 682; Chapman v. Walton, 10 Blig. 57; Marshall v. Ins. Co., 2 Wash. U. S. C. C. 558; Leetch v. Atlantic Mut. Ins., 5 Ins. Law Jour. 775.

Professor GREENLEAF says:—

"On questions of science, skill, or trade, or others of the like kind, persons of skill, sometimes called "*experts*," may not only testify to facts, but are permitted to give their *opinions* in evidence. (1 Greenleaf Ev. 416.)

#### PAROL EVIDENCE.

**1424.** *Parol evidence* is that delivered *verbally* by a witness. The difference is great between leaving the consent of the company to be proved by the vagueness and unreliability of parol evidence, and requiring to be shown by a formal indorsement upon the policy, by the hand of the secretary or agent.

**1425.** Judge THOMPSON says:—

"There is no rule of law better settled, or more salutary in its application to contracts, than that which precludes the admission of *parol evidence* to contradict or substantially vary the legal import of a written agreement."

Hale v. Ins. Co., 6 Gray Mass. 169; Couch v. City Fire Ins. Co., S. C. E. Conn., 1 Ins. Law Jour. 134; 1 Pars. Ins. 107; 1 Duer Ins. 167, 176, 220; Ins. Co. v. Yates, C. A. Va., 6 Ins. Law Jour. 625; Snow v. Stroude *et al.*, S. C. Ala., 7 Ins. Law Jour. 484.

**1426.** The true meaning of the rule excluding *parol evidence* is, that such evidence shall never be received to show that the *intentions* of the parties were directly opposite to that which their language expresses, or substantially different from

any meaning that the words they have used, upon any construction, will admit or convey. (1398.)

Holmes v. Ins. Co., 10 Metc. Mass. 211; 1 Phillips Ins. 75, § 122; Angell Ins. 61, § 23; Colt v. Commercial Ins. Co., 7 Johns. N. Y. 385.

#### WHEN NOT ADMISSIBLE.

**1427.** The stipulations *implied* by the language of the policy of insurance are as much a part of the instrument as any of its *express* provisions, and cannot be countervailed by proof of *oral agreements*, understandings, notices, or representations between the parties, since this would be adding to or subtracting from the contract. (1407a.)

Lochner v. Ins. Co., 17 Mo. 247; Hough v. City Fire Ins. Co., 29 Conn. 10; Barret v. Ins. Co., 7 Cush. Mass. 175; Lowell v. Ins. Co., 8 id. 127; Jenkins v. Ins. Co., 7 Gray Mass. 370; 11 id. 163; Jennings v. Ins. Co., 2 Denio N. Y. 75; Franklin Fire Ins. Co. v. Martin, S. C. E. & A., N. J., 8 Ins. Law Jour. 134; 1 Taunt. 115; 2 Valin's Comm. 445.

*Parol evidence* of consent to a non-compliance with an express stipulation is held inadmissible.

The subsequent *oral* admissions of one party are not permitted to be proved by the other to contradict the written contract, as that would give them the same effect as if inserted in the contract.

Nor is *parol evidence* competent to show a *verbal agreement* to make any change in the conditions of a policy, as no such agreement could be binding unless assented to by the insurers *in the manner indicated in such conditions*.

So. Mut. Ins. Co. v. Yates, C. A. Va., 6 Ins. Law Jour. 625.

*Parol evidence* is not admissible to vary or explain the terms of a policy or an application, when the latter has been made a *warranty*, and there is no ambiguity in either.

Nor can that which is a *warranty* in a policy of insurance by its terms, be shown, by *parol evidence*, to have been inserted by mistake. (Cooper v. Ins. Co., 50 Penn. St. 299.)

Nor is it admissible to vary the terms of a written contract, or to show what risks were intended to be covered and protected by the contract. Or, to show that other interests were meant to be covered; or, that other persons were inter-

ested in the subject insured—whether offered by the insured to enlarge, or by the underwriter to diminish, the amount of recovery. Such evidence is not explanatory, but repugnant and contradictory.

1 Arnould Ins. 78, § 45; Houghton v. Gilbert, 7 Carr. & P. 701; Ins. Co. v. O'Neill, 13 Ill. 89; Glendale Wool. Mill Co. v. Ins. Co., 21 Conn. 19; Sheldon v. Hartford Ins. Co., 22 *id.* 235; Hovey v. Ins. Co., 2 Duer N. Y. 554; N. Am. Ins. Co. v. Throop, S. C. Mich., 1 Ins. Law Jour. 98; Alston v. Ins. Co., 4 Hurd. N. Y. 329, reversing 1 Hill 510; Lee v. Ins. Co., 3 Gray Mass. 583; Lochner v. Ins. Co., 17 Mo. 247; affirmed 19 *id.* 628; Millar Ins. Co., 4 R. I. 141; Honnick v. Ins. Co., 20 Mo. 82; Ripley v. Aetna Ins. Co. 30 N. Y. 136; Hare v. Barston, 8 Jur. 928; McGivern v. Prov. Ins. Co., 4 Allen N. B. 64; Todd v. Liv. & Lond. Ins. Co., 18 U. C. C. P. 193; Connolly v. Prov. Ins. Co., 5 Q. L. R. 6; Bishop v. Clay Ins. Co., 45 Cam. 453.

## WHEN ADMISSIBLE.

**1428.** *Parol evidence* may be received, not to vary the legal contract, but to explain the true meaning of the policy, in the following cases:—

*First*, Relating to *mercantile usage*, so as to ascertain the sense and understanding of the parties by their contracts, which are made *with reference* to such *usage or custom*, which *usage or custom* then becomes a part of the contract, and may not improperly be considered the *law* of the contract. "Such proof," says Justice STORY, "is always to be admitted with cautious reluctance, and to be watched with scrupulous jealousy." (222.)

Westchester Ins. Co. v. Earle, S. C. Mich., 5 Ins. Law Jour. 61; Continental Ins. Co. v. Randolph, C. A. Ky., 10 Ins. Law Jour. 387.

*Second*, To fix the application of *general or intermediate words*; showing the words to be interpreted to have been used by the parties in a *distinct and peculiar sense*, as when particular words may, with equal propriety, be understood in *two different senses*, and the context fails to determine which ought to be adopted. In such cases the evidence is merely explanatory. (Standard Oil Co. v. Ins. Co., N. Y. C. A., 5 Ins. Law Jour. 594; Mickey v. Ins. Co., 2 Ins. Law Jour. 86, § 21.)

*Third*, Relating to the representations of the insured, and to correct *errors of description* by showing the identity of the subject to which it relates. (Eilenberger v. Ins. Co., S. C. Pa., 8 Ins. Law Jour. 373; Fennings v. Ins. Co., 2 Denio N. Y. 75; Molière v. Ins. Co., 5 Rawle Pa. 342.)

Green v. Equitable Ins. Co., 11 R. I. 434.

*Fourth*, To remove *latent ambiguity*, and enable the court to understand and enforce the contract. (Stone v. Elliott Ins. Co., 45 Me. 175.)

*Fifth*, As to the *extent of the interest* of the insured, if it does not con-

tradict the terms of the policy itself. (Pitney v. Ins. Co., N. Y. C. A., 4 Ins. Law Jour. 765; Roots v. Ins. Co., 1 Disn. O. 138; Franklin Ins. Co. v. Drake, 2 B. Monroe Ky. 47.)

*Sixth.* To explain *technical terms*, or words peculiar to some trade or business—terms of art, science, mechanics, and the like. (217.)

## LEVY.

**1429.** Where a stipulation of the policy requires notice of an incumbrance or *levy* made upon the property insured, such notice is a substantive and material part of the contract. A levy of an execution has reference only to a levy on *personal property*, as a levy on *real* property is unnecessary and now unknown to the law. (Colt v. Phoenix Ins. Co., N. Y. C. A. 54 N. Y. 505; Hammel v. Queen Ins. Co., 54 Wis. 72.)

**1430.** Where the stipulation is that the policy shall cease upon property insured, "should it be *levied* on or taken into custody under an execution or other proceeding at law or equity," it is held to be valid. (Schroeder v. Ins. Co., 2 Phil. Pa. 286; Wily v. Standard Ins. Co., High Ct. Justice, Q. B. Div., Ont.)

But does not apply to a wrongful levy made upon the property insured as that of another party. (Ins. Co. v. Mills, 44 Penn. St. 241; 4 Benn. F. I. Cases 730.)

**1431.** After notice of lien against his property has been given by the insured, as required by the policy, to the insurers, their consent to stand as insurers would be implied if there was no dissent expressed.

**1432.** HELD: "A stipulation of the policy, 'that the insurance by this policy shall cease from the time the property hereby insured shall be levied upon or taken in possession or custody, under an execution or other proceeding at law or in equity,' referred to executions subsequent to the issuing of the policy; and the fact that the property was under execution at the time of the insurance, and continued until the time of the fire, did not affect the right of the assured." (Colt v. Phoenix Ins. Co., 54 N. Y. 505.)

**1433.** Where insured property burned while in the *custody* and possession of the *sheriff*, though on the premises of the insured, HELD: That the insured was entitled to recover. (Franklin F. I. Co. v. Findlay, S. C. Pa., 6 Whart. 483; 2 Benn. F. I. Cases 74.)

A mere *notice of levy* by the officer charged therewith, to the insured, at their store, without taking the property into custody, though good as a *levy*, will not avoid the policy. (*Rice v. Tower*, 1 Gray Mass. 426; *Phoenix Ins. Co. v. Lawrence*, 4 Metc. Ky. 9; *Ins. Co. v. O'Malley*, 1 Norris Pa. 463.)

**1434.** A person having acquired a title to property by *levy* of execution, the debtor is not entitled to the proceeds of the policy in case of loss. (*Plimpton v. Ins. Co.*, 43 Vt.; 1 Ins. Law Jour. 678.)

## GARNISHEE,

## OR TRUSTEE PROCESS.

**1435.** *Garnishee*, as connected with the insurance contract, is the same as at common law process. The *principal points* are as follows:—

An unadjusted or unliquidated claim for loss upon a policy of insurance against fire is subject to attachment in the hands of the insurer.

*North Star Boot Co. v. Ladd*, S. C. Minn., Aug., 1884; *Winrow v. Raymond*, 4 Barr Pa. 501; *Wilson v. Haynes*, 6 Harris 354; *Weaver v. Springer*, 2 Mile Pa. 42; *Lehigh Valley Ins. Co. v. Fuller*, S. C. Pa., 6 Ins. Law Jour. 486, 116.

**1436.** "Where a policy has been assigned after loss, in order to *garnishee* the insurer, notice must be given in season to enable such insurer to show such an assignment in his answer, in case of suit, or before judgment is obtained. But, having received such notice, if the insurer neglects to show it in defense, he cannot resist a subsequent claim of an assignee; but, having shown such notice of assignment, he cannot be charged as *garnishee*."

*Hebel v. Amazon Ins. Co.*, S. C. Mich., 5 Ins. Law Jour. 599; *Hartford Ins. Co. v. Owen*, 39 Mich. 441; *Oriental Bank v. Tremont Ins. Co.*, 4 Metc. Mass 1; 2 Benn F. I. Cases 171; *Boyle v. Franklin F. I. Co.*, 7 Watts & S. Pa. 76 2 Benn. F. I. Cases 291.

**1437.** Any assignment of the claim by the insured, after service of the *garnishee* upon the insurer, does not affect the attachment or relieve the insurer from liability under it.

**1437a.** Garnishment is equivalent to the commencement of a suit. (**1172.**)

**1437b.** The proceeds of an insurance policy are exempt from seizure, under the Homestead Exemption Law in Texas. (Case of Frieburg, Klein & Co. v. Ins. Co., in a lower court, not reported.)

In the case of *Wooster v. Page and Trustee* (54 N. H. 4 Ins. Law Jour. 483, § 107), it was HELD: "That an insurance company would be held as trustee in execution process when the debt which it owes the principal defendant is solely due on a policy of insurance upon household furniture, which at the time of its destruction by fire was exempt from attachment."

#### PREMIUM RESERVES.

**1438.** The question of "Insurance Reserves," though a vital one, seriously affecting the solvency of fire underwriters, and one that has been a theme of frequent and earnest discussion under various phases, seems, nevertheless, to have received no satisfactory solution, as there still is no little divergence of views and understandings upon the subject. More especially is this true as to the intention of the law compelling fire insurance offices to set aside each year a certain percentage of the premium income of such year, as representing that portion of unexpired insurances on which the premium has not yet been fully earned, hence to that extent not *de facto* the property of the company.

**1439.** By many persons this compulsory reserve—known as the "*unearned premium fund*"—is supposed to be thus set aside to cover the probable *losses* of the companies for the coming year upon the unexpired insurances of the past year, with which, however, it has no connection whatever, though it may occasionally occur that the sums thus set aside, especially by the larger offices, will exceed the losses of the year: but they would not be ample to pay losses and secure the unearned premiums at the same time. In discussing the ques-

tion of insurance reserves, the subject will be treated under two divisions: *Reinsurance*, or unearned premium, *fund* and *Surplus*.

#### REINSURANCE FUND.

**1410.** As a rule in insurance practice, all premiums are supposed to be due and payable at the time of issue of the policy, that is in advance, and the policy stipulations usually so require, so that the underwriter's ownership in such premium is commensurate only with the portion thereof earned day by day, the balance being held by law, as the property of the insured, for which no equivalent has yet been received by him, and hence a liability against the company like any other debt. The New York statute makes the repayment of unearned premiums in full obligatory upon all insolvent companies, before the payment of all other claims, which latter must come in only pro rata as the available assets of the estate may pay. Hence, this fund or reserve is simply such portion of the premium income set aside yearly as will be deemed ample to repay so much of such premium income, at any given date, as may not have been already earned by carrying existing risks, more or less nearly to expiration, and only affects the companies in the matter of existing policies, and not those that have had losses, yet unpaid; or in other words, it has nothing to do with the payment of losses. The whole theory of a reinsurance fund is practically illustrated in the cancellation of a current insurance and the return of the unearned premium for the undetermined time of the policy.

**1411.** The doctrine of "unearned premiums" comes down from early marine practice, resting upon the principle that, "if the risk be not absolutely run" the consideration for the premium fails and it must be returned. In charters granted by the States of Pennsylvania and Massachusetts, 1794-1800, it was provided that "The moneys and notes received for premiums on risks outstanding and undetermined at the time of making any dividend, should not be considered as a part of the profits of the corporation," and such is still the law in Massachusetts,

being equivalent to a reserve of 100 per cent., as in the marine branch, until the risk has been "marked off." But when estimates are made for annual statements, without reference to dividends, the Offices are permitted to compute their reserves as established by the Insurance Departments, to put them, in this respect, on a par with the companies of other States.

**1442.** With the right to cancel existing insurances for any cause, by insurer or insured, by which operation the premium was divisible into two parts—the portion to be returned to the insured being the *unearned*, and that retained by the office the *earned*—the opportunity for an earlier realization upon the earned assets was recognized, and the premiums upon all undetermined policies at any given date were construed to be earned in proportion to the expired term for which the policies had been written; and this *earned* portion was deducted from the aggregate premium on outstanding risks, and to this extent the divisible surplus was held to be enhanced.

**1443.** That premiums *received* must provide for the portion unearned is a self-evident proposition; but just what pro rata of such premiums remains unearned at any given period, or how the same shall be ascertained outside of a seriatim valuation of each existing policy, is one of the many unsolved problems still vexing the fire underwriter. A plan by which this process can be materially facilitated will be found in Sec. (1450).

**1444.** Several distinct elements enter into the computation of the proportions of premium receipts necessary to form an ample reinsurance fund; amongst the most important of which are, *first*: the *duration* or term of the insurance; *second*: the *amount of business* done, and its distribution during the year; and *third*: the *rates* of premium.

1. The term or *duration* for which risks may be written is known as *long-term*, in excess of one year; *annual*, or single year, and *short term*, or periods less than annual; these, furthermore, vary with the companies, some writing upon dwellings or non-hazardous business, largely under long-term policies and at low rates of premium; others writing mainly annual risks

in towns and cities; whilst others again, in the larger cities, transact a large amount of business under short-term policies, and to these is to be added the immense amount of insurance done by agency companies, comprising both annual and short-term business, though not necessarily in equal proportions.

2. The *amounts written* vary with the abilities of the several offices and the class of hazards carried, ranging from non-hazardous to extra and specially hazardous, with usually corresponding premium rates. The larger the amounts of premium received the larger must be the reserve.

3. Then, again, come *rates*, which are seldom uniform, even where tariff associations exist. Taking the average annual rate as a basis, long-term premiums fall largely below the average, while short-term rates are quite as much in excess of the average annual rate; and these again vary with the several classes of companies, in various localities, thus injuriously affecting the uniformity of the unearned premium liability as between the offices; as when two or more companies write concurrently as to time and amount, but vary as to rate upon the same risk, which is too frequently the case when competition is rampant and tariffs are ignored. In such cases, whilst the actual *insurance* liability of the offices will be exactly the same in amount at risk, their respective *reserve* liabilities will be quite different, as the following figures will demonstrate:

Cos.	Writing.	Rate.	Prem.	Reserve.
A.....	\$10,000	\$1.00 per cent.	\$100	\$50.00
B.....	10,000	1.25 per cent.	125	62.50
C.....	10,000	1.50 per cent.	150	75.00

Thus the highest rate offices, B and C, loyal to the tariff, are called upon for a higher reserve upon the same liability than the low rate office, simply because they obtain a larger amount of premium therefor—upon which the reinsurance reserve is predicated—and not because they have a greater liability at risk.

**1445.** Taking these various factors into consideration, even then the amount of business done throughout the country must

needs approximate uniformity to warrant an average of six months upon each undetermined insurance at the close of any given year; for should the business have fallen off toward the closing months of the year, pro rata reserve would fall off correspondingly; while had there been any marked increase of business during the same months over the previous months, the proportion of reserve to be set aside as unearned premium fund would be much greater.

**1416.** But inasmuch as approximate accuracy only was deemed essential for this purpose, the average system was adopted generally by State Insurance Departments, assuming as the basis of computation that the majority of fire insurance policies are for one year only; that the short-term risks, with increased rates, are about counterbalanced by long-term risks at lesser rates, but in larger numbers, so the average duration of the aggregate might be safely taken as one year, and the pro rata of the unexpired annual business should be taken as fifty per cent. to constitute the unearned premiums of the year. In later years, however, this fifty per cent. average on *all* business has been changed so as to apply only to annual and short-term risks, while long-term policies are computed pro rata for their actual unexpired terms.

**1417.** From what has been said, it is evident that unearned premium upon undetermined policies is a current liability, to meet which the company must be prepared at all times, as the policyholder may, at his option, call for the cancellation of his contract at any moment; or the company may desire to cancel some policy and tender, or pay the unearned premium for the undetermined time of the insurance. It is upon this principle that the law treats "unearned premium" as a debt, and insurance Commissioners charge these amounts against the companies as a liability; and if this charge, together with unpaid losses or other debts, creates an impairment of the capital, such impairment must be made good within a given time or the company will be declared insolvent; in which event the first payments made by receiver or assignee will, under the law of New York, be these same unearned premiums on outstanding policies, after

which the remaining assets will be marshalled among the other claimants, lawyers and receiver.

**1448.** Fortunately for the unburned policyholders, and the company as well, the legal premium reserve is always held by the office in interest-bearing securities; hence it will, or should, always be ready for such emergencies, for this fund stands rather for gain than loss; it carries with it a productive asset always equivalent to, if not more than this liability, as in cases of reinsuring, such value could, upon a good line of business, be disposed of for a sum considerably above the actual unearned premium liability; for in such transfers the cost of obtaining the business is always a factor in the estimated value above the naked premium, but one not considered in computations made by insurance departments.

**1449.** There is nothing exact about this requirement of the departments; it is but a "rule of thumb," to avoid the necessity of an actual itemized valuation of unexpired risks. The reserve created under it is more than ample for the purpose intended; yet its application forms no absolute test of solvency; and that it works unjustly, and sometimes mischievously, no one familiar with its operation will deny. (1444-3.)

**1450.** A very simple and practical method of arriving at the exact amount of *unearned* premium, upon the current business of an office, at any given date, in detail and in the aggregate, with a minimum of labor as compared with the ordinary means, where such detail is practiced, would be to have appropriately ruled sheets, upon which each risk could be entered by the entry clerk, with but slight addition to the ordinary entries, as it comes into the office, whether over the counter or from an agency, each agency having its own sheet filed with its office record.

On these sheets the risk should be entered, and where the term of expiration overlaps the close of the year, the *unearned* portion of the premium for such excess of time should be entered in the appropriate columns, any policies canceled in the meantime being marked off as they drop out, so that

at the close of the year, or at any other time, by simply footing this column, the amount of outstanding unearned premium could be at once found.

At the close of the year, after the computations have been made, these sheets could be gathered into book form, and filed among the most valuable records of the office; a series of such books would form an important portion of the history of the company.

The following *extended* form for such a sheet is submitted as embodying the idea suggested; a briefer form could be made by omitting some of the less essential details:—

(Left hand page.)

BUSINESS OF 1890.

Agency Number.	Policy Number.	Date.	Term.	Amount written.	Expiration	Premium.
350	971	July 1, '89	1 Year.	10,000	J'y 1, 1890	100 00
329	1079	Jan. 1, '89	3 Years.	2,500	Jan 1, 1892	25 00
970	2159	Jan. 1, '89	5 Years.	2,000	Jan 1, 1894	20 00

(Right hand page.)

BUSINESS OF 1890.

Unex- pired Time.	Unearned Premiums, Dec. 31, 1890.					Rem'ks
	1 y'r or less.	2 Years.	3 Years.	4 Years.	Years.	
6 Mos.	.....	.....	.....	.....	.....	Cancel'd
2 years.	.....	\$16 67	.....	.....	.....	
4 years.	.....	.....	.....	\$15 00	.....	

While the result of such a statement would not in all cases meet the requirements of the insurance departments, it would show to the company just how much of the premiums received during the year were fully earned and at their disposal, a fact which the department requirement does *not* show.

## SURPLUS.

## FIRE LOSS RESERVES.

**1451.** In addition to setting aside the legal reserve to meet the unearned premium liability, the companies have a contingent liability of about equal or greater amount, arising from current losses which may occur upon the undetermined policies of the year, for which the law makes no provision, each office being left to provide not only for ordinary loss claims as they arise, but for extraordinary conflagrations which occur from time to time, and by which the financial ability to meet these obligations will be sooner or later brought to a test.

The necessity for adequate reserves to meet the recurring contingencies to which the business is constantly subject, being acknowledged by all practical underwriters, the question looms up how to reconcile a legitimate accumulation of reserve with the rights of both insurer and insured; to which end numerous plans have been suggested, but as yet none of them, except the Safety Fund system, seems to have met with any acceptance as being feasible and practicable. The chief difficulty, however, seems to lay in a nutshell. Stockholders are, with some few notable exceptions, unwilling to dispense with present dividends to secure future immunity.

Insurance *promises* indemnity against numerous contingencies. How that promise is to be redeemed with any certainty where the amounts at risk carried by the companies are so largely in excess of their assets—not unfrequently as millions to hundreds—is the problem that has staggered our fire underwriters in their efforts to solve the problem.

While these heavy sums outstanding at the risk of the companies represent *actual* liability, at any given date, it is scarcely within the range of possibility, and much less within the range of probability, as experience has demonstrated, that a company with a business spread over a wide area, as the larger agency offices have, could under any circumstances be called upon to discharge this entire load of liability, at any one time. But that it will be called upon from time to time to redeem its promise in greater or less proportions, is beyond

question; but to what extent upon any one occasion is the point that combined human wisdom has not yet been able to forecast; and it is of this uncertainty, this chance that loss will not happen, that the gambling instinct—if we may use the phrase—of human nature is so prone to take present advantage of an insurance, leaving the events of the future to provide for themselves.

#### INSURANCE RESERVE.

**1452.** Another name for *surplus* of assets over and above *all* liabilities, including the cost of reinsurance.

As before said, many plans have been devised for raising and maintaining a "general reserve fund," that shall not only be ample to reinsure outstanding risks, but at the same time be adequate to enable a company to withstand the sudden shocks of such great conflagrations as Chicago, Boston, and more recent occurrences in other localities, without being overwhelmed and totally burned out in a single locality. But just how this shall be effectively accomplished, none of the plans yet submitted seem to meet universal acceptance.

**1453.** The laying aside of certain portions of the annual premium income, before declaring dividends, as for the unearned premium fund, and in addition thereto, seems the only practical method for any real accumulations in the way of reserve, or surplus. This is the plan of the English companies, and the result is apparent in the manner in which they are able to meet large calls with no derangement of either assets or dividends to stockholders. But inasmuch as losses and expenses must be satisfied out of premium receipts, occasions may occur when the premium income will not more than suffice to meet such claims; in which event no reserve remains to forego dividends, and! carry that amount at least to surplus.

#### CAPITAL.

**1454.** Is the aggregate sum of money subscribed by individuals as ultimate security for policyholders of the companies; it thus has a dual liability: first, to the policyholders to

whom it is pledged as security, and second, to the stockholders themselves who have virtually loaned the amount of their several subscriptions to their companies, somewhat after the manner of respondentia loans. If money is made, the loans will be returned; but if only loss ensues the loans are not repayable. If the capital becomes impaired, the impairment must be made good by the shareholders out of their private funds. Capital thus becomes a debt against the company, and is so charged up by the insurance departments; and as it has its own specific duty to protect the policyholder to an extent largely in excess of its own amount, it alone cannot be relied upon in great emergencies, as has been amply proved.

**1455.** President Platt, of the Ins. Co. of North America, and the late President Hendee, of the *Ætna*, showed a proper appreciation of this fact, when they said in effect that, "It was increase of surplus as well as of capital, that a company needed to place it in a position to meet losses as they occur without trenching upon capital."

#### THE SAFETY FUND LAW.

**1456.** This truly conservative law, operative in the State of New York since 1874, and more recently in Rhode Island, represents the insurance principle in its integrity, by laying aside a portion of the earnings of the company in fair weather, as preparation against foul; a legitimate provision, by which the insurer is enabled, at a small temporary sacrifice to himself, to make good promised indemnity when occasions may require.

A voluntary annual surrender by the stockholders of one-half of the accrued profits of the business, which they might otherwise have divided among themselves as dividends, to their companies for the additional security of the policyholder, *an insurance of the insured*.

**1457.** Under this law the companies are permitted to set aside annually a certain portion of the accrued profits of their business as a "safety fund," which shall not be liable

for any losses of the company occurring subsequently to the setting apart of such sums, provided that an equal amount of the profits shall also be set aside at the same time, to be called a "guarantee fund," which shall be maintained as long as and to the same amount as the "safety fund;" but shall, like the other assets, be liable at all times for payment of losses and other claims against the company. If at any time from any cause, the "guarantee fund" shall be reduced below its normal sum, no more shall be added to the "safety fund," until the "guarantee fund" shall be fully restored to its proper proportion; after which profits may again be partitioned, share and share alike, between the two funds, which are to be invested in interest-bearing securities, and held to await events; the "guarantee fund" by the company, and the "safety fund" by the insurance department of the State, the company having the option to draw the annual interest on the securities deposited, or leave it to increase the deposit fund.

**1457a.** Should the company's capital become impaired at any time, the deficiency is to be made good out of the "safety fund" to its full extent, if need be. Or should the sum of the loss at any time exceed the "guarantee fund" and other assets, the "safety fund," together with the unearned premium reserves—the property of the unburned policy-holders, *i.e.*, policies on which there was no loss—becomes a new basis for the company to operate upon, so that while the other assets remain in the hands of the company itself for distribution among the burned, or loss policy-holders, thus obviating the expense of a receivership, the business is continued exactly as if no misfortune had occurred; the impairment being made good by the safety fund instead of by additional calls upon the stockholders. These accumulations are to continue until the two funds shall jointly equal the amount of the capital stock, until which time the dividends declared upon the capital are limited to *seven* per cent. per annum; after the joint accumulations shall reach the sum of the capital, the dividends are unrestricted. In this restriction lies the key to the system.

The Safety fund law was enacted by the Legislature o

New York, A. D. 1874, the result of experience arising from the conflagrations of Chicago and Boston, 1871-2, where property to the extent of hundreds of millions was swept out of existence, sweeping into the flaming vortex the total assets of scores of companies, and seriously impairing the capitals of many others among the largest of the American offices, thus involving both stock-holders and policy-holders in heavy losses, which by the operation of this law might have been largely averted; and yet, although fifteen years have now elapsed since the law became operative, but nine offices have availed themselves of this simple method of averting a similar disaster at any time.

## PROGRESS OF THE SAFETY FUND RESERVES.

Capital.	1874.	1875.	1877.
Unchanged \$4,000,000	2 Co's. 185,000	3 Co's. \$494,350	5 Co's. 950,030
1878.	1880.	1885.	1889.
6 Co's. 1,304,300	7 Co's. 1,653,000	8 Co's. 2,659,952	9 Co's. 2,789,177

## BOOK RATE, OR VALUE.

**1458.** What is technically known as the "*book rate*" of a company is the amount that its assets would net to the stock-holders upon closing business on a given day and returning its capital to the subscribers pro rata. The "*rate*" is found by dividing the amount of the capital into the sum of the net assets, thus:—

Capital, \$500,000.	Net assets, \$570,000:	rate, 1.14
" 500,000.	" " 490,000:	" 98

But, inasmuch as the net assets, shown by the ordinary annual statements of the companies, would be liable to considerable shrinkage upon actually closing up business, such "*book value*" must be taken with some grains of allowance.

## CLASSIFICATION OF HAZARDS.

AS INDICATING THE COST OF INSURANCE.

**1459.** The subject of classifying the various fire hazards and losses thereon, with a view to obtain reliable data as to the cost of insurance, and the values of the several hazards so classified, has long occupied the attention of fire underwriters of both continents. But after the lapse of more than two hundred years, with exceptional instances among some of the leading offices of the country, however,—which thus far have been careful not to contribute anything to the general stock of knowledge upon the subject,—in the language of a veteran fire underwriter :

**1460.** “ We may safely say that we have no data from which we can determine the actual cost of a single class of risks for a period of ten years ; we may approximate to a rate on some of the safer classes, but, as a whole, the business is absolutely without that chart of experience furnished only by combined results, carefully noted and preserved. Indeed, whenever statistics have been obtained, they have been so limited as to prove of little value to the individual, and of no value to the common interest, from the want of aggregation and publicity.” \* \* \*

**1461.** “ No man can safely underwrite a single risk, while he may write a thousand with a profit, at a rate based on the average loss on a thousand risks of like character ; neither can he fix an adequate rate of premium to a single risk, while he may, in the light of experience, fix a proper rate to a thousand. The law of average prevails to a wonderful degree in many departments, subject to the wildest caprices of chance in its individual members. Nothing but the winds and the waves can be more capricious and uncertain than human life in the individual man ; yet life itself, in the aggregate, presents an average as certain as the simplest proposition in mathematics. The average life of a thousand men presents a mathematical certainty, and a thousand risks on property, subject only to *accidental* destruction by fire, should present an equal certainty for calculating premium. \* \* \* Whatever actual knowledge of this law may have been obtained by the older and more studious observers has either been kept as a precious secret, never to be divulged, or has died with its possessor, and gone down to oblivion with the lost arts of other days. In fact, little or no reliable data or results of former years have been collected or preserved for our benefit or guidance. We can hardly estimate the value of a system of classification and statistics of a dozen of our largest companies for the past fifteen or twenty years.”

The late Elizur Wright, while Insurance Commissioner of Massachusetts, A. D. 1861, said very pertinently :

**1462.** "The prosperity of all fire insurance companies depends very much on a knowledge of what is the average value of the risk of each species or class of property, and this can only be approximated by the widest and most careful statistical inquiry. No such inquiry has ever been instituted in any country, to our knowledge. In this country it is certain it has not been. Our countrymen must have gone into the business with no better light than the experience of companies in other countries, and a sort of dim instinct teaching them that a carpenter's shop or a livery stable, exposed to ignited cigar-stumps and other incendiary missiles, must be several times more hazardous than a well-kept dwelling house."

**1463.** A volume might be filled with similar extracts from "high authorities" in fire underwriting, theorizing upon the subject of *classification of fire hazards and losses* as the basis of all correct rating. Unfortunately, the matter has been permitted to stop with the acknowledgment of its absolute necessity, and no combined effort has been made to establish such a system of uniform classification as would meet the needs of the profession, although abundant material therefor is to be found in the possession of every office in the country, fully equal in range and breadth of average to the present "Life Tables," by which that branch of insurance is so successfully controlled.

**1464.** While the individual experience of any single company would lack that variety and comprehensiveness needful to a complete generalization of any special subject in consequence of its comparatively limited sphere, except after a series of years and close observation, the combined experience of a number of companies, presenting a broader average of risks and losses, would furnish more exact data as to the "fire history" of hazards generally. Nevertheless a critical record of the business of any single office, duly persisted in for a length of time, would eventually present a condensed fire history of its own business that would serve effectually as a beacon for future operations.

**1465.** In estimating the value of a class of hazards as an insurance risk, something more must be known than that so much money was received for premiums and so much paid out for losses thereon, whether the former be in excess of the latter or *vice versa*. The *inherent* hazard of a risk is the standard of its classification, exposure is but incidental. Hence it is that all

general information found in census reports, or elsewhere, showing so many risks of so many classes, valued at so many dollars, or a list of burnings of so much property valued at such an amount of money, are of small account to the fire underwriter as factors for classification; such information being too general, and lacking in essential particulars, and furnishes no information as the insurability of the properties named, or the causes of the several fires from which the fire history of the several risks can be discovered; such discovery must be made through an entirely different and more practical process. It must be known, so far as practicable, just why any class of risks burns or is likely to burn, and this can only be ascertained by a thorough inspection of the several hazards, inherent or otherwise, attending the risks, and when these have been discovered and their liability to burn ascertained, there is an important point gained in the making up of the "fire history" of the class.

**1466.** Nor is this all that is needful. Very many risks burn from causes not *inherent* in themselves, such as accident, exposure, incendiarism, etc., etc., which should not be chargeable, in classification, directly to the hazard of the risk itself. Thus, if a planing mill be set on fire by the burning of a neighboring church or dwelling; or if burned by the willful act of owner or others; or from any cause, in fact, not inherent in itself, and from which any non-hazardous risk might have burned under similar circumstances, it does not necessarily make the planing mill a bad risk. Hence there must be a classification of the *causes of fires* as well as of the risks themselves; and at the close of the year, when it is ascertained that so many risks of any given class, out of the number written, say ten out of one hundred, and of these ten, two or three only burned from a cause inherent in the risk, the remainder burning from remote, dishonest or accidental causes, and this record repeated for a series of years, even with the experience of a single office, there would be small difficulty in approximating the rate of a normal risk—that is, one ordinarily insurable, of which the classification register would indicate the fire history with almost inevitable certainty. Thus will statistics create knowledge, and eventually

fix basis rates; and if uniform rates are ever to be made permanent, it can only be after some reliable system of classification of fire hazards and losses shall become general and interchangeable among the companies.

**1467.** No system of classification can be made to embrace every class of hazard in detail, without rendering such classifying more cumbersome in bulk than valuable in facts. Nor is this minuteness of detail needful for practical purposes of the business. A few of the more prominent mercantile and manufacturing hazards may be made special subjects of classification, while the remainder may be grouped into classes, with reference, as nearly as may be, to a common inflammability and combustibility; thus presenting, at a minimum of both time and labor, a system of practical classification within reach of every fire office disposed to avail itself of its own ever-present opportunities.

**1468.** Unlike the life risk—where once rated, despite of increased age and growing infirmities, the rate remains unchanged to the end; the fire risk may pass through various changes, as of occupancy, surrounding exposures, or internal increase of hazard; yet, unless such changes are consented to by the insurer at the time, and an increase of premium paid, the policy, by its own terms, is vitiated simultaneously with such increase. And as these insurances are, for the most part, annual, upon each renewal the rate is made adequate to the hazard at the time; and as classification is based upon the rate and class, the risk finds the proper place upon the register, as if a new risk of that class and rate, entered for the first time; or, if the risk still remains in the same class, the additional rate of premium affects the increase of hazard.

**1469.** One, and it might be termed the chief, drawback, attending upon classification, has been a misapprehension as to the time and labor required for the purpose. All that is necessary to be recorded are the classes of the risk—each class having its own specific number upon the record—the number of such risks written; the amount covered by the policies thereon, and the aggregate of premiums received therefor, on the left hand

page; and the amount of losses on each class opposite its respective number; the aggregate of losses on each class; the aggregate amount of the policies of each class under which losses occur, and the aggregate amount paid upon each class, upon the right hand side. Any difference between the amounts received for premiums on each class and the amount paid for loss on the same classes will be the profit or loss gross upon each class for the year, and when these results have been obtained, the *loading* for expenses, etc., can be added, thus shewing the actual profit or loss *upon the business* for the year. (1474.)

**1469a.** But to complete the "fire history" of the business, it will be necessary to classify the several losses, with a view to learning why and wherefore each risk burned, whether from *inherent* hazards of its own, or from exposures, which will require a separate classification for this purpose, shewing the various causes of fires, and how many of the losses occurred from one or the other of the specified causes. A continuous annual aggregation of these results will afford a very fair approximation of the value of each class, as recorded, as a money producer at the rate of premium charged for the year. (1476.)

That such a record will involve the expenditure of both time and labor is self-evident, but, properly carried out, this plan involves a minimum of both. Any business that cannot afford the time and labor for its proper conduct is not worth following.

**1470.** Efforts have been made to induce companies to *combine*, for the purpose of exchanging results of individual experiences in classification, holding such information private among themselves. As yet, however, few of the offices have deemed the advantages of *combined experience* sufficiently inviting to counteract the disadvantage attending an exposure of the details of their business to the inspection of their confrères.

**1471.** To facilitate this desirable end, and, as far as possible, simplify the method for recording experiences upon the several classes of risks, "GRISWOLD'S CLASSIFICATION OF FIRE HAZARDS AND LOSSES" was prepared for use in the office with which he

was then connected ; it was subsequently offered to the public, at the request of the officers of several companies, and is now in use by a number of companies throughout the country.

It comprises a REGISTER of 180 demy folio leaves, sufficing for ten years record of the business of any company, large or small, or 18 leaves for each year, including one page for writings, and an opposite one for losses each month, with ruled columns for 80 classes of risks, brick or frame, shewing premiums received on each class. (1472.)

**1472.** There is also a *daily memoranda*, or day book, in which the risks are entered as they come into the office, under their respective class numbers, and these at the close of the month are, after cancellations are crossed off, aggregated and carried to the appropriate monthly pages in the Register. A similar record of losses paid is made each month from the "Loss Book," and transferred to the Register, the two pages of which will then exhibit the transactions of the month, which again, at the close of the year, are carried to the yearly page, and results thereupon obtained.

**1473—SPECIMEN SHEET, showing the manner of arriving at Results of the Annual Aggregate Business for the Year.**

## FRAME (OR BRICK)

[illegible]

**1471.** The *second form* (**1476**) represents the CAUSES OF FIRES for the year, aggregated and averaged.

This form is made up from an original table of *itemized leading causes*, where *all* of the fires occurring under any one of the classes—80 brick and 80 frame—are duly recorded and entered in the "Loss Book," and at the end of the year these are grouped under their respective *general* headings, and their numbers and ratios obtained. These yearly results are carried forward year by year, and a grand aggregate of the entire classification is thus kept up, by which not only the results of a present year, but of all preceding ones, are to be seen at a glance, and a systematic record of the causes and frequency of fires, and their *cost* to the company, is constantly at hand for reference; so that the risk itself, and its own peculiar hazard, outside of the owner—its fire destructibility—is exhibited in its true light, whence its value can be readily ascertained, and with a certainty fully equal to the mortality tables of life insurance. (**1469a.**)

**1475.** The following are the itemized and classified Causes of fire losses:—

INHERENT.	DIRECT.	FRAUDULENT.	REMOTE.	UNKNOWN.
Explosion or spontaneous combustion.	Gunpowder. Fire-works. Lightning.	Over-insurances. Supposed incendiarism.	Exposure by neighboring premises.	Unknown
Explosion of steam boilers.	Accident. Carelessness.	Gross negligence. Arson or incendiary.		
lard tanks.	Ashes, sparks.			
Steam-pipes, defective flues, furnaces.	Pipes, matches. Kerosene lamps. Gasoline.			
Pickers in cotton or woolen mills.	Chemical oils. Benzine.			
Steam-dryers.	Naphtha.			
Friction, heated Gas-journals.	Gas. Tobacco.			

CLASSIFICATION OF FIRE-HAZARDS AND LOSSES: Comprising a system of DAILY MEMORANDA, with MONTHLY and ANNUAL CLASSIFICATION. By J. Griswold, General Agent. Third Edition.

20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	Class Number.
																	1	2	3	Total Number of Losses, 18....
																	1	2	3	Total Amount Paid during the Year for Losses of each Class.
																	500 00	2,000 00	7,500 00	Total Amount Paid for Losses, 18....
																	1	1	1	Number of Losses from "Inherent" Causes.
																		300 00	2,500 00	Amount Paid for Losses from "Inherent" Causes on each Class.
																	25.	33.3	33.3	Proportion of the Total Losses of the Year.
																	1	1	1	Number of Losses from "Direct" Causes.
																		1,000 00		Amount Paid for Losses from "Direct" Causes on each Class.
																	50.			Proportion of the Total Losses for the Year.
																	1	1	1	Number of Losses from "Remote" Causes.
																		2,500 00		Amount Paid for Losses from "Remote" Causes on each Class.
																		33.3	33.3	Proportion of Total Loss for the Year.
																	1			Number of Losses from "Fraudulent" Causes.
																		500 00		Amount Paid for Losses from "Fraudulent" Causes on each Class.
																		100.		Proportion of the Total Losses of the Year.
																	1	1	1	Number of Losses from Causes "Unknown."
																		500 00	2,500 00	Amount Paid for Losses from "Unknown" Causes in each Class.
																	25.	33.3	33.3	Proportion of the Total Losses of the Year.

1476.—CAUSES OF FIRES for the year 18—, Aggregated and Proportioned.

## RATES.

**1477.** While it has been tritely remarked that "the primary *public function* of an insurance company is the payment of losses to its policy-holders," it is no less true that the primary *private function* is the payment of dividends to its stockholders; and as the capital stock of a company is not the natural fund for the payment of either losses or dividends, the possession of an "ample premium reserve" is a *sine qua non*, upon which the performance of either or both of these *functions* must be contingent (**1438**); hence, it becomes a question of primary importance to the underwriter—and incidentally to the policy-holder—as to the adequacy of the source from which such reserves shall be accumulated. In the absence of "combined experience" and "mortality tables," from which to estimate the cost of fire insurance and base the value of an insurance risk, the question of premium rates has become one of doubt and perplexity, where all should be fact and certainty; and upon no subject connected with fire insurance does greater divergence of views prevail, even among the oldest and most sagacious underwriters than as to *what is an adequate rate.* (**391.**)

**1478.** The value of insurance lies in its *future* strength, which must come solely from the price paid for premiums; but until the fire offices of the country shall unite upon uniform rates—the legitimate results of *recorded* experience, embracing wide areas and aggregates—the rating of fire hazards will remain the system of guessing that it has thus far been.

**1479.** Insurance, as EMERIGON truthfully says:—

"Is a species of play demanding great prudence on the part of those who meddle with it. Perils must be analyzed and chances accurately calculated; the hidden dangers of the sea foreseen, as well as those of bad faith, and rare and extraordinary emergencies taken into view. All those must we combine, and *measure with rates of premium*, to enable us to judge of the final result; speculations like these belong to the province of genius."

**1480.** This matter of *rates* is managed quite differently in England among the best offices, where all the companies, with scarcely an exception, act upon one fixed scale of rates throughout the United Kingdom, so that strife and competition for

business resulting in cutting rates—so prevalent in this country—is there the exception rather than the rule. All the better class of companies are united under what is termed

THE UNITED KINGDOM TARIFF ASSOCIATION.

**1181.** The managers of companies hold stated meetings in London, at which the experience of each, upon any particular class of hazards that may chance to need revision, is given, and new rates if deemed advisable are agreed upon, and go into operation throughout the United Kingdom simultaneously. To the credit of the companies be it said that tariff rates are maintained loyally, both at the respective home offices and at the several agencies. The result is there is no writing below the fixed rates, and this is so well understood by the insuring community, that no rebate is asked or expected when applying for insurance at Tariff offices.

**1182.** The companies thus acting harmoniously, and sustaining each other in obtaining adequate rates, the younger companies reaping the benefit of the experience of the older ones,—it is not surprising that the stocks of the several companies throughout the Three Kingdoms reap the benefit of this unanimity, and show an average market value of one hundred per cent, or more above par.

**1183.** It is a peculiarity in the agency system also, that *no agent represents more than one company*. If business is offered in amounts larger than his agency can carry, the excess is cared for at the home office, so that he does the same amount of business and realizes the same amount of commissions as if he held a large number of companies, as is customary in this country.

The various risks are classified and the rates affixed with great minuteness of detail as to the class of building and occupancy; an arrangement much facilitated by the great uniformity among buildings of the same class, and similarity in trades and manufactures of the country, which have no counterpart on this side, where scarcely any two risks, nominally of the same class, present the same insurance characteristics.

**1481.** In the absence of any uniform tariff of rates, the following suggestive hints will afford some assistance in approximating the true value of insurance hazards generally:—

- First:* THE MORAL HAZARD—“*the Man.*”
- Second:* THE NATURE OF THE HAZARD—*the Risk.*
- Third:* THE CLASS OF BUILDING—*Height, Area.*
- Fourth:* THE OCCUPANCY *of the Building.*
- Fifth:* EXPOSURES, *External and Internal.*
- Sixth:* FIRE EXTINGUISHING FACILITIES, *External and Internal.*
- Seventh:* PROBABLE LOSS *in the event of Fire.*
- Eighth:* TAXES, LICENSES, ETC., *State and Municipal.*
- Ninth:* AMOUNT OF INSURANCE *as to Value of the Property at Risk.*

#### I.—MORAL HAZARD.

**1485.** The *moral hazard* of a risk was most pertinently defined by Col. Ducat as “*the danger from friction caused by high insurances and low, depreciated stocks and property coming together.*” And just the difference between what would have been the fire loss with no insurance, and the fire loss under insurance, would be the *moral hazard* of the risk. It is universally conceded that this *moral hazard* is much the larger moiety of the risk; hence, in estimating the value of a hazard, it becomes of vital importance “*to know the man,*”—his character, antecedents, business habits, commercial standing and pecuniary responsibility—which may be said to comprise the “unknown quantity” in the calculation.

**1486.** To such an extent is this true, that to many thinking minds it is a question of serious import whether fire insurance is or is not a benefit to the community at large. Whether, by holding out to the losing merchant or speculator the fearful temptation of a ready market for his property, where “that skillful salesman fire,” may dispose of it with small loss, and perhaps without detection, the immunity of the incendiary does not bring insecurity to property, and entail severe losses upon the commonwealth; for property destroyed by fire is not restored to the state by payment of indemnity to the individual.

**1487.** The inference from this state of facts again is, that carelessness—"interested carelessness"—is very often the cause of losses by fire; and the question suggests itself as to whether the distinction between one who *allows* his property to burn because he is insured, and he who fires it to obtain the insurance, is not rather in degree than in kind.

**1488.** How shall this *moral hazard* be met and rated? A query more easily put than readily solved. Raise the rates? Premiums may be raised to such an extent as to be beyond the reach of honest men, yet be within the reach of knaves, who will not higgler as to rates upon property they propose to burn. Limit the lines? This may operate in individual cases where the parties are known; but, if known unfavorably, or not known at all, they were better let alone; and in the event of doubt, give the company the benefit of such doubt, and let the applicant seek elsewhere for his insurance.

## II.—NATURE OF THE HAZARD.

**1489.** The "RISK," considered within itself, consists of such causes of loss—not chargeable to the insured—as, in the aggregate, tend to make up the peril insured against.

**1490.** A century since all risks were lumped into a few rough divisions, in consequence of which the best risks paid more, and the more hazardous paid comparatively less than their respective values. But two rates of premium were charged in England, dependent solely upon the construction of the building: two shillings per cent. upon brick or stone, and four shillings per cent. on brick and timber houses; at one time large sums were actually carried upon the Drury Lane Theatre at *two* shillings per cent., it being built of brick, while the Pantheon Theatre, built of brick and timber, paid *four* shillings per cent. The present rates on these risks would be from two and a half to five guineas per cent.

Experience has demonstrated that in affixing rates of premium, attention cannot be confined to what may be designated

*normal* risks—the selected of each class, as in life insurance—but the sum of all the combinations of all the different probabilities of construction, situation, occupancy, exposure, etc., of the various components of each class, must be duly considered and duly weighed.

**1491.** For ease of reference, and with a view to facilitate the fixing of rates, the various kinds of insurance risks, movable and immovable, are now grouped into classes, under the heads of non-hazardous, hazardous, extra hazardous, and specially hazardous (**1491**) for merchandise and manufacturing establishments; while buildings have been arranged into four corresponding classes (**1498**), intended to represent, respectively, their relative values one with another, as insurance risks, and thus afford an approximate idea of a corresponding rate. But, whether the subject be a non-hazardous dwelling or a hazardous A or B, or an extra hazardous C or D, merchandise, or a specially hazardous manufacturing establishment, the underwriter will still be largely dependent upon his own resources, as each of the subjects may have desirable or undesirable phases contingent upon individual circumstances, which might remove it from the category of any specified class, thus rendering necessary a personal inspection, and the exercise of sound judgment and discrimination to rate it adequately until the various structures of the country, nominally of the same class, and the several trades and manufactures shall more nearly assimilate the respective normal conditions of the basis of each class of hazards.

**1492.** As in most else connected with the practice of fire insurance, there is great diversity of ideas among underwriters as to the choice of business. Many offices confine their operations entirely to dwellings, as mutuals generally; others again limit their business, in addition to hazardous and non-hazardous classes, to some of the better class of extra hazardous subjects in cities, eschewing all specially hazardous risks entirely as undesirable; while other more venturesome offices, usually "agency companies," write freely upon the better classes of manufacturing establishments after thorough inspection, and find it profitable to do so.

**1493.** Opinions differ also as to profitable results arising from risks which command a *high* rate of premium as compared with risks paying only *low* rates, some underwriters holding, upon general principles, that *good* risks pay *low* rates, while *bad* ones command *high* figures; but it does not necessarily follow that all *non-hazardous* risks are good and desirable at low rates; nor that all manufacturing risks are bad and undesirable, simply because they command better prices than the less hazardous classes.

On the other hand, experience has demonstrated that an average line of *high rate premiums*, well selected and properly rated with a view to the value of the risk, will bear a much heavier percentage of loss than an equally desirable line of *low rate premiums*, and leave a larger residue of realized profits.

This proposition becomes self-evident when the fact is considered, that *low rates* of premium entail the necessity of large lines of insurance and consequent increase of liability to realize a given amount of business; while *high rates* of premium always accompany reduced lines of insurance, usually graded with a view to the rate of premium, with a proportionately reduced liability; the result is that while *special hazard* lines are comparatively small and proportionately scattered, in case of loss, even if total, but a minimum amount can under ordinary circumstances be lost at any one fire. On the other hand, *low rate* lines are always large in proportion; and in case of fire, the loss is always relatively larger, even when partial only, by smoke and water. The following supposed cases will illustrate

Insurance \$10,000, on merchandise hazardous and extra hazardous in a store; rate 45 cents; premium \$45.

Loss occurs by water and smoke only, say \$2,500: a low estimate.

The company pays \$2,500, for which it has received \$45 only.

**1494.** On the other hand: Insurance upon ten Planing-mills, \$1,000 each at ten per cent. premium \$1,000.

Loss occurs, and one is totally destroyed: loss \$1,000. The company pays \$1,000, for which it has received \$100.

Thus, a company could lose *five* planing-mills for every *two* merchandise risks, and yet have \$410 more premium upon the

risks. This is estimating the loss on the merchandise risk as partial each time, and the special risk as total. It is also estimating a proportion of losses, as between the two classes, which experience in well selected specials will not maintain as against the latter. And when the comparison is made with manufacturing establishments of a less hazardous nature, such as the cotton and woolen mills generally of the Eastern States, the difference becomes much more marked in favor of high-priced risks.

#### CONTENTS OF BUILDINGS.

**1495.** In cities and towns having reliable and effective fire departments, with an ample supply of water at hand, *standard* buildings—stores, warehouses, and dwellings—are usually considered more desirable than their contents, as being more likely to result in a salvage in cases of fires; but so much depends upon the nature of such contents and the occupancy of the premises, that the preference of the one over the other becomes a matter of judgment after survey, and cannot be relied upon as a rule.

Where the fire department is not efficient and the water supply is not abundant—and in frame buildings—there can be no question as to the preference to be given to stock over the buildings. It is very common to write upon stocks in frame ranges, where the buildings would be deemed uninsurable, reliance being had upon the chance for salvage in case of loss. In *detached* buildings, the chances for loss upon building and contents are held to be about equal.

#### III.—CLASSIFICATION OF BUILDINGS.

**1496.** *Standards of classification* adopted for rating purposes, whether of *buildings* or other hazards, are necessarily general; so many contingent and modifying circumstances enter into individual cases, that no *specific* rule will apply in every instance. Although desirable in a high degree as a guide to the inexperienced, and indispensable to the practical underwriter as a means of approximating reliable averages, yet no system of

classifying buildings can be made so minute and comprehensive as to be practically and uniformly operative in all cases; hence, the decision in each instance must be special, founded upon inspection and guided by judgment, and to this end *classification* can be referred to with beneficial results.

**1497.** The necessity for some *classification*, as a basis upon which to estimate the value of buildings as insurance risks, has been recognized from the earliest introduction of fire insurance as a means of indemnity. "*Classes of hazards*" are found as components of the policy as early as A. D. 1806 (**456**), though in a primitive form, which was changed from time to time until A. D. 1830, when the following was in use :—

CLASSES OF HAZARDS, AND RATES OF ANNUAL PREMIUMS.

FIRST CLASS OF HAZARDS.	SECOND CLASS OF HAZARDS.	THIRD CLASS OF HAZARDS.	FOURTH CLASS OF HAZARDS.
Buildings of Brick or Stone, covered with Tile, Slate, or Metal; the doors and windows of solid iron, party walls above the roof.	Buildings of Brick or Stone, covered with Tile, Slate, or Metal, party-walls above the roof.	Buildings of Brick or Stone, roofs three-fifths of Tile, Slate, or Metal, the rest shingled, party-walls above the roof.	Buildings of Brick or Stone, covered with Wood, party-walls above the roof.
22 cents per \$100.	25 cents per \$100.	30 cents per \$100.	45 cents per \$100.
FIFTH CLASS OF HAZARDS.	SIXTH CLASS OF HAZARDS.	SEVENTH CLASS OF HAZARDS.	EIGHTH CLASS OF HAZARDS.
Buildings of Frame, filled in with Brick to the peak, and the front of Brick	Frame Buildings, filled in with Brick to the peak, or with Brick front filled in to the plate.	Frame Buildings, filled in with Brick to the plate, or with hollow walls and Brick front.	Buildings entirely of Wood.
60 cents per \$100.	75 cents per \$100.	84 cents per \$100.	90 a 100 cents per \$100.

Subsequent to 1835, this classification was omitted as a part of the policy.

**1498.** THE CLASSIFICATION OF BUILDINGS adopted by the NATIONAL BOARD OF FIRE UNDERWRITERS, and applying to all kinds of buildings without reference to occupation, is now most commonly accepted among the offices, and is probably the best

for practical purposes, as being in general use. It is designated by the first four letters of the alphabet, thus :—

CLASS A represents a building *fire-proof from the outside in every respect*; having no wood work exposed; being of brick or stone, *with heavy fire-walls; metal, slate or tile roof; cornice, if any, of metal or stone*; and the *doors and shutters* over all openings, front and rear, made of *heavy iron*, and set in iron frames. (1535.)

CLASS B represents the next best construction, similar to Class A, except being deficient in the *iron doors and shutters*. It is customary, however, to class ordinary brick, *metal-roofed* buildings as B, even if the *fire-walls* are not entirely reliable (1531.)

CLASS C represents the ordinary style of brick or stone building, with *shingle or composition* roof.

CLASS D represents wooden buildings generally.

**1499.** The following additional or *intermediate* classifications are used by many companies to more particularly describe buildings rating as *extra* or *number one* of their class.

#### INTERMEDIATE CLASSIFICATION.

BB representing a B building with *some iron shutters, good fire-walls*, and otherwise of superior construction—closely allied to class A in regard to safety.

CC representing a brick building, with *roof partly metal*, or the better sort of gravel roofing, good walls, and *no wooden cornice*—almost a B.

DD representing a wooden building, with *metal, slate or tile roof*.

**1500.** Each of these classes has a *basis rate*, subject to variations on account of local circumstances, such as the efficiency of the fire department, the protection afforded by the police, a plentiful supply of water, etc., etc. To this must be added additional rates for deviations from the standard of its class, and for increase of risk arising from external exposure, nature of the occupancy or character of the occupants.

#### CLASSIFICATION OF TOWNS AND CITIES.

**1500a.** Modern practice has introduced into the business a "Classification of cities and towns," based upon the fire fighting facilities possessed by each, for which allowances are made in the rates, as follows :—

*1st Class* :—Places having water-works of the best construction, with duplicate pumps, and steam fire engines with sufficient power to throw water from street hydrants over any of the business buildings, and a well-equipped Fire Department.

*2nd Class* :—Places having ordinarily good water supply, with a well-organized fire department and steam fire engines.

*3rd Class* :—Places having an organized fire department, with effective hand engines, supplied from cisterns or other fair water supply.

*4th Class* :—Ordinary country towns without fire departments.

#### OMNIBUS BLOCKS.

**1501.** *Omnibus blocks*, so termed, where two or more buildings of brick or stone are *under one roof*, having openings or communications in one or more stories—sometimes with a *public hall* occupying the entire upper stories of two or more of the buildings—the internal division walls, and sometimes the external, *rising only to the roof*. Such rank only as C at the best.

But when the tenements are divided by *studding partitions*—the first store only having brick divisions—such rank as DD or simply D.

Two or more buildings having interior communications on one or more floors occupied by the same party, throughout with the same exposures, will be considered as one risk, and the rate is proportioned to the extent.

#### FRAME RANGES.

**1502.** Buildings of wood, in close proximity to each other, usually adjoining, are known as "*frame ranges*."

To constitute a "*frame range*" it is not necessary that the buildings should stand in a compact row; if they adjoin around the corner, or by rears, or stand thirty feet or less apart, they are to be regarded as a *range*.

One building, with two or more distinct occupancies on the ground floor, should be counted as two or more, as the case may be.

## FIRE-WALLS.

**1503.** FIRE-WALLS—*Standard*: In buildings of *five* or more stories, the foundation walls of brick should be from twenty to twenty-four inches in thickness—if *stone*, not less than two feet—the side walls should be *sixteen* inches in thickness, or *twelve* inches if *ledged*; and should rise above the roof two feet or more, well coped with stone.

**1504.** *Fire-walls* are sometimes improperly designated as "PARAPET WALLS." While all proper fire-walls should have a *parapet* or *breast wall* rising above the roof, a *parapet* wall is not necessarily a *fire-wall*, except in so far as it may afford protection against fire. *Fire-walls* should be without openings; or if there be such, they must be protected with fire-proof *shutters* hung upon iron frames. (1512.)

The floor-joists should rest upon *ledges* built in the walls for that purpose, and enter the walls not less than two inches, to give them steadiness. Where floor-joists are let into the walls, they should be beveled, and so placed as not to come opposite to each other in adjoining buildings, or so as to touch at the ends, and thus communicate fire from one building to another.

**1505.** *Division* or *party walls*, in blocks of two or more tenements, may be *twelve inches*, if not too high. They should rise as a *parapet* above the roof, not less than two feet, and be substantially coped with stone.

*Division walls* reaching only to the roof, with timbers resting upon them, are rated as "communicating" or *omnibus*.

**1506.** *High buildings*, above standard height,—fifty one feet—grow more hazardous and are out of the reach of the fire-engines; and, when filled with heavy stocks of mixed merchandise, even *double fire-walls* will not always be a protection against a fire fairly under way within them. The *walls* of such often fall with crushing force, doing corresponding damage.

*Extra large blocks* are liable to the same contingencies, in case of a fire once fairly started within one of the stores.

Where inflammable liquids are contained in buildings such as described, the danger is still greater. Once on fire, such substance cannot be controlled; the slightest crevices are sufficient avenues for the spread of the burning fluids, and with them of the devouring element. Alcoholic liquors, coal oil, and druggists' stocks, are peculiar illustrations of this hazard, as has been too often proved. The Patterson warehouse of Philadelphia, stored with barrels of whiskey, is a very apt illustration.

#### ROOFS.

**1507. Fire-proof:** Iron, copper, tin, slate, tile, and shingles laid in mortar, are considered *fire-proof*.

*Plastic slate* has been subjected to some severe tests, and found in many cases to be quite effective in withstanding strong heat for a time; but, being a *composition*, it may not at all times be reliable, though far preferable to the ordinary cement and gravel roofing. *Gravel, composition, and shingles are not fire-proof.*

**1508. French or Mansard roofs:** This style of roofing was at one time extensively used, not only in separate buildings, but in covering large blocks containing a number of stores each; and as the division or party-walls do not come through and above the roof, they are in fact *omnibus blocks*. They are sometimes made to include two or three stories above the brick front of the building, or, as they are appropriately described, "a two-story frame range on top of a four-story brick building," out of the reach of the fire-engines. They are as ordinarily constructed, not favorites with the companies, and are charged an extra rate.

**1509.** A committee of the NATIONAL BOARD appointed to consider this subject, reported, among other matters, as follows:—

"When we take into consideration the fact that the majority of these roofs are placed upon buildings which, from the sidewalk to the top of the cornice, are from sixty to ninety feet high, and which buildings, under the other very salutary provisions of the law relating to the erection of buildings to

which we have referred, are required to have heavy division walls, and otherwise rendered massive and nearly fire-proof, it would seem to be an absurdity, were it not a serious matter, to allow to be placed on such structures another building, built of pine or other light wood, covered with slate, or, worse still, corrugated iron, and, from want of copings to the face of the division walls, to expose not only the building itself, but its neighbors on either side to destruction, as no barrier of any kind would exist to prevent the extension of a fire."

## CORNICES.

**1510.** Brick, stone, or wood, covered with iron, zinc, or plain wood, are the various kinds in use. These latter are usually made elaborately heavy and large, and invite fire from adjoining or even distant buildings. So also with what are commonly called *Barge-boards*,—a corruption of the term "Verge-board," an inclined, projecting board placed vertically at the gable-end of a building, hiding the horizontal timber-ends of the roof. These verge-boards are of wood, frequently very heavy and ornamental, and hence quite ready to take fire. When buildings so adorned are in close proximity, they seriously expose each other.

## DEADENED FLOORS.

**1511.** Three or four inches of mortar between the floor-joists tend much to the safety of the building, by confining the fire to the room where it commences, until it can be extinguished. Such floors, with *iron laths* for the walls, would make it almost impossible for a fire to extend beyond the room where it commences. Saw dust or similar inflammable material should not be used.

## FIRE-PROOF DOORS AND SHUTTERS.

**1512.** A door, to be a safety stop to the progress of fire, should be constructed of two or more thicknesses (according to its dimensions) of good, matched pine boards, free from pitch and knots, crossed at an angle of about forty-five degrees, wrought-nailed and clinched; covered on sides and around the edges with good quality of tin; the sheets to be hooked or lock-jointed, and securely nailed at the lock lines with nails not less than one inch in length, with the tin bent and hammered over the nail heads; no solder to be used. No air spaces left under the tin, as the more solid and compact the door the greater the fire resistance.

All *swing* doors to have heavy wrought iron strap hinges, bolted through and secured by nuts. (Screws will not answer, as they work loose by use.) The pintles or hooks to be securely anchored in stone blocks let into the wall when of brick. The door should shut into a rabbet, or be flush with the wall.

If *sliding* doors be used as a safe-guard against negligence, they should be hung upon a slightly inclined bar of iron, fastened to the wall overhead so as to be self-closing when not in use, with iron sheave-pulleys securely bolted to the door, like the hinges in swing doors. They should also be made to overlap the sides and top of the opening from three to four inches, and shut into jambs of masonry or crooked inch iron bolts, to hold the door at top and bottom from warping out when closed.

All door sills to be of stone or other solid masonry, and should rise one or two inches above the floor level. All door jambs, casings, etc., of wood should be securely sheathed with tin over every opening where fire could penetrate.

Where these tin-covered doors are exposed to dampness they should be covered with a coat of good paint as a preservative.

The advantages of this kind of door are that they cannot warp, even with the greatest heat to which they would be ordinarily exposed, and thus let the fire through; while the tin, from its thinness, can hold no body of fire to burn the wood beneath, which by the way *sheet-iron*, being a thicker metal, would do, to a greater or less extent, under similar exposures.

Iron, on the other hand, soon gets heated and must expand and warp, and the thicker the iron the more will it expand and warp, and thus create openings for the flames; or, if bolted permanently, will be heated to redness, and thus become fire itself, endangering everything around it. The New England Factory Mutuals, some eighteen or nineteen in number, all recommend or require this class of doors and shutters in the mills they write upon. Such doors and shutters, properly affixed, will entitle the insured to a proportionate reduction of rates.

*Zinc* as a covering for doors or shutters affords no protection, as it fuses like lead in contact with heat.

**1513.** It not unfrequently occurs that fire-proof window shutters and doors fronting upon the street are fastened so securely as to prevent their being opened when a fire occurs in the building, and thus delay access to the firemen. To avoid this dilemma one shutter on each story should be so arranged as to be readily opened from the outside in cases of emergency. In fastening these shutters so securely the fact seems to be overlooked that they are not intended as security against thieves, but to prevent access by surrounding flames. The author calls to mind a case, some years since, in the city of Louisville, Ky., where the whole contents of a cotton mill warehouse were des-

troyed by fire during the night, but not discovered until the morning when trying to open the doors.

When wide doors are *double*, one on each side of the opening, as they should be for security, the pintles should be bolted through the intervening wall, so that neither can fall and leave the other unprotected.

*Fire-proof shutters* or *doors* hung upon or in connection with wooden frames, is a wasteful expenditure of money; the very object aimed at is defeated by the wooden frame in contact.

**1514.** HELD: "That the description in a policy, 'iron shutters and doors,' whether regarded as a representation or warranty, was substantially true if there were such *shutters* and *doors*, and did *not* include by implication the duty of keeping them closed."

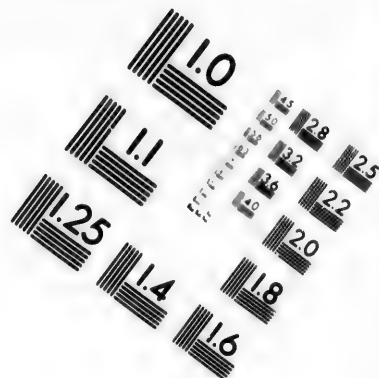
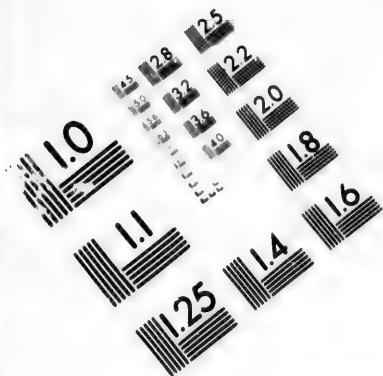
HELD also: "That the fact of their being open in the middle of August, at half past eight o'clock P. M., was no proof of negligence."

**1515.** HOISTWAYS or HATCHES, through which merchandise is usually elevated, are now generally boxed; they should be supplied with the proper doors or slides on each floor, to be closed at all times when not in use: if such doors or slides be fire-proof, so much the better.

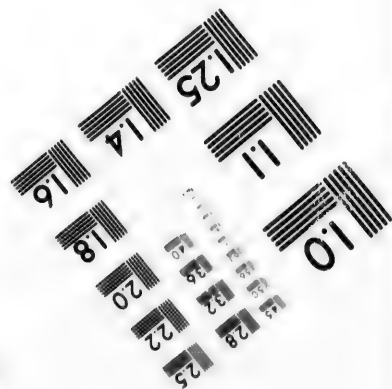
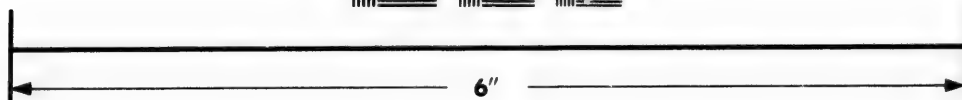
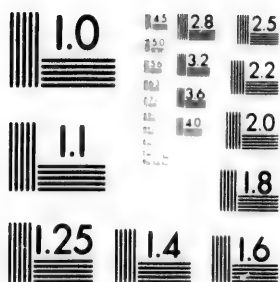
DUMMIES, ELEVATORS: Apparatus for elevating persons or goods to the upper stories, operated by steam, and usually inclosed or boxed throughout, with openings upon each floor. As ordinarily constructed, they are flues through which the flames find ready access to the upper portions of a building. A model elevator shaft, according to a recent schedule of the New York Board of Fire Underwriters, is inclosed in brick walls throughout with automatically closing trap doors at each floor, with glass lights at the top. Such shafts would act the part of a chimney and carry off the flames above the roof.

**1516.** WELL-HOLES are openings more or less large, in the floors of the upper stories, for the purpose of light and ventilation to the stories below; they are usually secured by a railing or rails, and are often covered by movable glazed sashes, protected by wire netting at the roof.

**1517.** SKYLIGHTS are openings in the roof, covered by glazed sash, for the admission of light to the floors beneath; they afford entrance to fires from neighboring buildings, and should



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in all cases be protected by wire nettings, sufficiently strong to withstand the weight of any pieces of timber carried by the winds from a neighboring fire.

#### IV.—OCCUPANCY OF THE BUILDING.

**1518.** *Occupations and trades* are classed as non-hazardous, hazardous, extra hazardous, and specially hazardous, according to their several natures and risks, and affect the rate in the same ratios. (**1485.**)

**1519.** *The maximum hazard* of any one combined risk rates the entire premises; so, where a building, or range of buildings is occupied for various trades or kinds of business, some hazardous and some extra hazardous, the highest rate of any one occupation will rate the remainder. So also with an A 1 building; by specially hazardous occupancy, it becomes subject to special hazard rates.

Stocks of general merchandise, where benzine, benzole, naphtha, gasoline, or ANY *similar oils* are kept at all, are to be rated the same as drug stocks in similar buildings.

So with warehouses where goods of low value, as jute, hemp, cotton, petroleum, etc., as well as those of a highly inflammable nature, as camphene, varnishes, oils, etc., are stored in the same locality with goods of higher value, but neither inflammable nor combustible in their nature, the former will rate the latter.

Stocks in upper stories of large store buildings, especially when very extensive, should pay an advanced rate over similar stock upon the grade floor.

**1520.** In manufacturing establishments, particular attention should be paid to the more hazardous appliances attendant upon the nature of the business—as the “offal-room” in wood-working operations; the “picker” and its surroundings, as well as “waste, sweepings,” etc., in cotton, woolen, and other similar mills. (**1528.**)

#### V.—EXPOSURES.

**1521.** In estimating the value of an insurance risk, the matter of exposure—*external* and *internal*—becomes of the great-

est importance, and should have proper consideration in fixing the rate.

*External* exposure is either that of adjoining or of adjacent buildings.

*Adjoining* buildings are such as touch each other, without intervening spaces, as "frame ranges," rear buildings attached to the main structure. They always affect the hazard materially.

**1522.** *Detached* buildings are those disconnected from any other or others, though the intervals may vary, as "detached five feet," etc. Custom among fire underwriters has given the term "*detached*" a broader and more definite signification, thus: *Brick* buildings are said to be "*detached*" when distant *seventy-five to eighty* feet from other similar risks or ordinary hazards. The presence of a specially hazardous risk within less than *one hundred* feet would ordinarily remove the building from the category of *detached* buildings. The term being thus arbitrary, much will depend upon judgment.

In cases of *frame* buildings, nothing less than *one hundred* feet would be considered "*detached*" under similar circumstances.

**1523.** *Isolated* differs from detached. *Isolated* buildings are such as stand entirely separate and apart, beyond ordinary burning distance, not less than *one hundred and fifty* feet under ordinary circumstances.

*Special hazards* expose other risks at a distance of *one hundred and fifty to three hundred* feet, according to the nature of the occupancy.

**1524.** *External exposure* is to be considered with regard to the class, area and occupation of adjoining buildings and of the building assured; the character of the division walls; the distance of exposure, etc.

This matter of *external exposure* is one of great importance, a large majority of losses being from this cause. The various shades of hazard arising therefrom; the manner in which they bear upon the property at risk in each case; the division walls

and their capacity to prevent the spreading of fire should all receive especial and careful consideration.

**1525.** *Internal exposures* arise chiefly from the nature of the occupancy. Wood-working establishments, or "shavings risks"—especially soft wood—have much more serious *internal exposure* than ordinary manufacturing establishments, as cotton or woolen mills, or hard-wood working shops; while wadding and batting, or flax mills, are much more dangerous than cotton or woolen mills. A manufacturing risk of any kind offers more material for fires than non-hazardous or simply hazardous occupations, and are rated accordingly.

In *wood-working* shops, the "offal-chute" and "shavings room" should be properly secured by *self-closing* doors both in the room where the offal is put into the "chute," and in the boiler-room where the offal is taken out for firing the boiler. This latter door should be so arranged as to open at right angle with, and not in front of, the furnace doors, as is too frequently the case.

In *cotton* and *woolen* mills, all *waste* should be cleaned out daily and stored in iron receptacles at a distance from the mill, as it is very liable to spontaneous combustion.

In *iron manufacturing establishments*, greasy rags, dripping of oil among iron borings and filings, should be carefully watched. Barrels *filled* with water—well salted in winter to prevent freezing—and a full supply of serviceable buckets, should always be at hand, throughout the building.

#### SCHEDULE RATING.

**1526.** *Schedule rating*, as distinguished from *specific* or *flat* rating, is a system of affixing prices by starting from a previously carefully adjusted *basis rate*, fixed upon a *standard* building of its class, and adding thereto, upon inspection, for any departures from such standard, according to the "*schedule*" adopted to meet such contingencies; the insured to be allowed a proper credit for the removal of such deficiency, thus placing it within the ability of each insured to control his own rating within the scope of the standard of his class. The rating upon contents will be controlled by that upon the building.

## VI.—FIRE-EXTINGUISHING FACILITIES.

**1527.** The matter of *fire-extinguishing facilities* available in cases of fire has an important influence upon rates, as tending to enhance or diminish the chances for salvage. Water facilities differ widely in efficiency at various localities. Some have the "Holly" or other systems available at all times; some have the modern steam fire-engine, and paid fire departments. Others are satisfied with the old-time "machine" and volunteer department; and still others trust to the chances of volunteer "bucket-carriers," and the supply of water from adjacent streams, or the wells and cisterns of the neighborhood. (1500a.)

**1528.** The introduction of *water-works*, and the use of *steam fire-engines* ready for emergencies, have much reduced the price of insurance in localities where these facilities are to be found; though it is questionable if the reduction in premiums by fire offices conceded therefor is warranted by the actual results to them. That the aggregate saving of property at fires by these means may be large, and inures to the benefit of property-holders—the uninsured especially—is undoubted. But, inasmuch as the underwriter pays for damages by *water* used in extinguishing the flames, as well as for losses by *fire*, and as in most instances where there is any salvage, it is because the fire has been *swamped out* by the free use of water, it becomes a question of some interest whether the *water damage* is not quite as great as if not in excess of the actual fire loss, especially with stocks of goods easily damaged by water and smoke.

## FIRE PATROLS.

**1529.** In many of the large cities "*fire patrols*," mostly at the expense of the underwriters, have been organized, whose duty it is to be present at every fire and protect goods by spreading covers in such a manner as to secure them from water from floors above. And it is wonderful with what rapidity these covers are spread, or hung upon the walls to protect the shelves. The salvage accruing to the offices amply repays the outlay for men, horses, and outfit.

**1530.** However intelligently water may be handled in the extinction of fires, it is, nevertheless, a rapacious element, destroying more than it succors of goods, wares and merchandise, so that underwriters, *as such*, are benefited by *water-works* and *steam fire-engines*, only in so far as they prevent the extension of flames to contiguous real property. Hence it is evident that they reap but little or no benefit in the way of salvage from burning stocks of goods, for what is not destroyed by fire is usually badly damaged by water. It is but just, therefore, that due allowance should be made for this contingency in fixing rates, but not to the extent usually exacted on this account by the insured.

When all fire-extinguishing appliances are wanting in any locality, the basis rate should be made to correspond with the exposures and probable results as to salvage in the event of fires, and the *lines* should be reduced to meet the rate.

#### AUTOMATIC SPRINKLERS.

**1531.** In manufacturing establishments the *internal arrangements* for meeting fires should be adequate to any emergency. To this end what are known as "automatic sprinklers," or fire extinguishers, have, within the last few years, come into extensive use in leading manufactories, in many stores, and in theatres, with much success. They consist of a system of piping attached to the ceilings of the rooms where used, connecting with an ample supply of water, and having, at intervals of from six to ten feet, distributing heads or "sprinklers" working by force of the water, each of which will cover a circle of many feet. These sprinklers are so graduated as to be set in motion by heat when rising above a certain degree in any portion of the room, the sprinkler in that part only operating, thus avoiding damage to the unexposed parts of the apartment. When effective, they are of great value, as by them the fire is averted before it has time to gather headway; but like most other self-operating machinery, it will fail at times, hence needs constant watching. Buildings fitted with these sprinklers are called "sprinkled," and are much sought after by the companies at reduced rates.

## VII.—PROBABLE LOSS,

## IN THE EVENT OF FIRE.

**1532.** As the chances for *salvage* always enter largely into the estimate of rates to be charged upon any given class of hazards, the *probable loss in case of fire* becomes a serious question. (1779.) Unfortunately, although progressive investigation may indicate something like scientific results, the law of fire destruction yet remains unsolved. (1544.)

**1533.** Exceptionally large fires do not compose the great bulk of the losses of the country in a year, though they may largely increase the average for a given locality. They intervene spasmodically and disturb the regular tariffs, but do not serve to change established bases.

**1534.** An estimate of *damage* likely to ensue from fire is a matter solely of experience and judgment, founded upon the *nature of the hazard*. It usually happens that the degree of inflammability is in proportion to the risk; consequently, the destruction of the property is more or less speedy and complete in the ratio of its "fire destructibility."

**1535.** The loss where extremely dangerous articles, such as benzine, naphtha, gunpowder, and other combustile and explosive substances are present, or in manufactories of the more hazardous classes, where wood-working is carried on to any extent, may reasonably be counted upon to be total as to the insurance, and should be met by corresponding rates of premium.

**1536.** In non-hazardous and hazardous risks the actual damage by *fire* may be insignificant, while the injury resulting from water or smoke, or both, may be large, particularly to stocks of tea, coffee, sugar, tobacco, and drugs, which suffer materially from *heat, water, or smoke*; while millinery, upholstery, shelf-hardware, books, etc., etc., are ruined by either to an extent not appreciated by the inexperienced. In the matter of plate-glass and mirrors, but slight heat will crack them; while fresco and gilding, pictures with their frames, and other decorative

adornments of dwellings and stores, are seriously impaired by water and smoke. On the other hand, boots and shoes and other "preferred stocks" suffer but slightly from the causes named.

But where no fire patrols are at hand, these contingencies must form an important part in the estimate of rates.

**1537.** Another, and by no means unimportant element must enter into the estimate of probabilities in this connection; that is *theft*, so common at and after fires. Indeed, many fires have their origin in the expectation of plunder during the confusion attendant thereon. (**1771.**) The probable amount of loss from this cause will be largely dependent upon the facility with which the property can be concealed and carried away, and the care bestowed upon its preservation by the owner or the police authorities. Large amounts are always thus stolen, especially in broken stocks, as clothing, boots, shoes, and hats, cigars, tobacco, etc.; and, as the underwriters do not pay for stolen property, effort should be made to distinguish the stolen from the burned in the adjustment of the loss.

#### VIII.—TAXES, LICENSES, DEPOSITS.

**1538.** While the supreme judicial authority of the country has decided that individuals of one State are entitled to all the rights and immunities of, and upon the same terms as citizens of any other State in which they may sojourn in the prosecution of their business, the same high authority has ruled that *corporations* have no rights, outside of the State that gave them existence, which sister States are bound to respect. The result is that *deposits, licenses, taxes* and *fees* have been, in some few States, assessed upon insurance corporations especially, until they have become almost, if not quite, prohibitory.

**1539.** In consequence of this restrictive *special taxation*, some States, the companies of which suffer thereby, have adopted *retaliatory legislation*, compelling the companies of such other States operating within their several jurisdictions to submit to

the same taxation, fees, license and deposits as may be required by their respective States.

**1540.** In addition to *state deposits*, varying anywhere from *ten to fifty thousand dollars*, for each agency company—State, county and municipal licenses, ranging from *twenty-five to fifteen hundred dollars* each, are *simultaneously*, in many instances, required from each company; while *special municipal* licenses, for the benefit of particular objects, as a medical college at Mobile, Ala. (\$250), fire departments, two per cent. on each company's receipts—as if insurance companies, instead of the uninsured property, were solely benefited thereby and for almost every other conceivable purpose for which a permanent source of revenue might be needed.

**1541.** Nor is this all. Agency insurance companies are further subjected to annual *state, county and municipal taxes*, varying from *one to five per cent.* upon the *gross receipts* of each, and this *simultaneously*. And to secure the payment of these exorbitant assessments, agents are, in some localities, compelled to give bonds in amounts from *five hundred to two thousand dollars*—under penalties for failure to comply with any of these provisions in the form of *fines*, varying from *five hundred to three thousand dollars*, and, in some extreme cases, *imprisonment of the agent from one month to one year on bread and water!*

**1542.** Fortunately these *prohibitory* assessments are confined to a comparatively small number of States. In others the assessments are comparatively light.

**1543.** In view of these heavy assessments, it will be apparent that, after the value of a risk has been approximated by due consideration of the foregoing contingencies, an addition, and by no means a small one, at interested places, should be made to cover expenses of licenses, fees, taxes, etc., etc., where so heavily imposed, as it is no more than even-handed justice that the companies should be reimbursed by an additional premium to

meet this taxation. In San Francisco, Cal., where a *two* per cent. city tax is assessed upon premiums, it is customary to add it to the premiums paid by the insured—a custom, by the way, well worthy of imitation elsewhere.

## IX.—RELATIVE AMOUNT OF INSURANCE.

### PARTIAL VERSUS FULL INSURANCE.

**1544.** A very material point in fixing rates, and one entirely overlooked by inexperienced underwriters, is *the relative amount of insurance to be taken as compared with the total value of the property at risk*. A policy for \$5,000, upon a stock of merchandise valued at \$50,000, is not an insurance of \$5,000 upon any specific portion of such value, but covers any portion thereof to its full extent in the event of loss. (390.)

The subject is one of importance, and will be considered under *three* heads :

#### I. PARTIAL INSURANCE.

**1545.** It has been a long-recognized principle in fire underwriting, that “the smaller the relative amount of insurance to the value of property covered, the greater the *risk* of loss to the insurer;” more especially when such loss may be *partial* only as to the value of the property, but total as to the insurance thereon, a large majority of fire losses being *partial*, not exceeding fifty per cent. of the value of the property at risk. Hence, the owner of goods who covers only *one-third* or *one-half* of their value *at the same rate he would pay for three-fourths* value, or more, does not pay a premium adequate to the risk, as in nearly all cases of fire, where there is a low average of *partial* insurance, the loss on this minimum amount will be total; a slight examination of the doctrine of chances will show that the premium in such cases is not proportioned to the risk. It is for the interest of insurance companies, therefore, to secure, up to a certain limit, a full insurance upon property, either by policies direct, when circumstances will admit, or by the application of

one of the *pro rata* clauses, thus compelling full insurance or its equivalent. (354.)

## II. ENHANCED VALUES.

**1546.** *Enhanced values* are equivalent to *partial* insurance.

By enhanced values is meant any marked or speculative enhancement in prices after insurance, as was the case during the late "unpleasantness," when property frequently doubled in value in hands of the insured, without additional outlay on his part, or increase of insurance or payment of enhanced premiums thereon.

While *enhanced values* do not increase the *degree of hazard* (aside from the moral feature), they do increase the *liability* of the underwriter to loss, upon the principle just stated under partial insurance. (1545.) Higher valuations call for a greater aggregate of premium for the proper compensation of the insurer, as the *actual insurance value* increases with the enhanced cost price, whether the appreciation result from such increase or from an aggregation of subjects as in compound policies, causing enlarged values, or from decreased rates.

**1547.** Upon this principle it is that compound or collective policies are objectionable, as a loss upon one of the subjects—equivalent to a partial loss only of the value—may sweep off the entire policy, leaving no recourse upon the remaining subjects of the insurance for contribution in the way of salvage.

It is just here that the equity of the graded co-insurance clause (390) is demonstrated. Under its stipulations the entire property is under insurance, either by underwriters or by the owner as co-insurer, and in the contingency of loss the insurer pays *pro rata* only as the agreed value of that portion of the property under the protection of his policy bears to the value of all of the property at risk, be the same more or less; and at the same time he will have received a full equivalent for the proportion of risk assumed by him.

## III. FULL INSURANCE.

**1548.** Full insurance is the converse of the proposition under *partial* insurance; that is, the larger the relative amount of insurance is to the value of the property, the smaller will be the amount of loss to the underwriter; the larger the lines of insurance carried, the less the proportion of loss to premium paid. The logical deduction from this proposition is, that a policy approximating in amount the *full value* of the property should not pay as much premium as a policy for *one-fourth* or *one-tenth* of such value only.

**1549.** The late Mr. HORE (in his work on Average Adjustments, p. 107) makes a mathematical valuation of the risk showing that liability to loss, under *full insurance*, would not exceed about *four* times the liability under an insurance of *one-tenth* of such value only. He says:—

“Where an insurance of \$100, on a value of \$1,000, pays premium \$4.00, an insurance of \$1,000 (full value) would pay only *four* times the rate of \$100, or \$16.00, instead of *ten* times, or \$40.00.”

For further illustration of this subject, see “Graded Co-insurance clause,” see, **390** *et seq.*

## ADJUSTMENT OF FIRE LOSSES.

**1550.** In connection with this subject, it may be well to define the terms *adjustment*, *apportionment*, and *contribution*, as they are frequently used synonymously, thus creating confusion.

1. *Adjustment* of fire losses is ascertaining and fixing the amount of loss upon the property under insurance, without reference to the companies interested.

2. *Apportionment* of fire losses is the act of determining and apportioning the ratable *contributive liability* (insurance) of each co-insuring company upon the ascertained general loss.

3. *Contribution* to fire losses is the payment of its *ratable proportion* of an ascertained general loss by each co-insuring company.

**1551.** The *object* of an adjustment is to arrive definitely at *certain facts* made contingent by the stipulations of the policy, upon the occurrence of loss or damage by fire to the subjects covered, so that the liability of the insurer and the responsibility of the insured, under the terms and requirements of the contract, may be accurately determined and adjusted; to the end that, while the insured shall be justly indemnified for his loss, the insurer shall not be called upon to contribute more than his equitable proportion to the payment thereof.

**1552.** An adjustment is a compromise, which by agreement fixes the rights of the parties to the contract; and by determining the amount of the loss becomes an admission, in the absence of fraud, that the insured is entitled to recover upon the contract of insurance. It is, however, simply *an agreement to pay*, which is binding only when founded upon previously admitted liability indorsed on the policy.

Until the underwriter has paid the money, he is at liberty to avail himself of any defense which the *facts* or the *law* of the case will furnish.

2 Arnould Ins. 1204; Herbert v. Champion, 1 Camp. 136; Shepherd v. Chewter, 17. 274; Ills. Mut. F. I. Co. v. Archdeacon, 8. C. Ills., 6 Ins. Law Jour. 423.

**1553.** To render an *adjustment* binding, it must be intended and understood by the parties to the contract to be absolute and final. There must be an *accord and satisfaction* (1976) agreed upon by the parties, which, when performed, will be a bar to all actions upon the subject. When an adjustment has been so made, it cannot be opened, except on the ground of *fraud* or *mistake from facts not known* at the time. (1968.)

Dow v. Smith, 1 Caines. N. Y. 32; Matthews v. Ins. Co., 9 La. Ann. 590

Neither party can allege *mistakes of the law* as a ground for setting aside an adjustment. But an adjustment made through mutual mistake and misunderstanding of material facts by the parties is not binding on either party. Or, if there be *fraud*, legal or moral (585), by either party to the adjustment, it will not bind the other party. (1967.)

Fanglew v. Halett, 2 Johns. Cases 151, 233; Matthews v. Ins. Co., 9 La. Ann. 560.

**1554.** *The policy as written, and the policy only must control the adjustment in every instance.* "The law defining the relation between the insurer and the insured is the *policy of insurance*, with all its clauses, conditions and stipulations, by (which their mutual rights and liabilities are to be defined and measured." (4 Wr. Pa. [40 Pa. Sta.] 289.)

Hence the *basis of an adjustment* is the contract of insurance, with its representations and warranties, together with all the written and printed conditions as they may be modified or controlled by subsequent indorsements, as given in the written portions thereof, without reference to any *alleged* verbal agreements between the insured and the agent, not included in or indorsed upon the policy before the occurrence of the fire. This should be the first lesson learned by the adjuster, and one never to be forgotten or varied from under any circumstances without proper authority. Any claims of the insured for a construction of the policy at variance with what appears upon its face must be submitted to competent authority for consideration and approval before being allowed.

The *policy*, or a copy of it, should always be present for examination and reference, in cases of adjustment of loss under it.

**1555.** The *processes* of adjustment, or rather of apportionment of the several insurances in cases of general losses will be simple or complex, as the co-insurances may be specific or involved, as in cases of compound or blanket policies interested with specific insurances upon the same risk.

The general principles upon which any adjustment should be made always remain the same, however, though differing somewhat in the methods of application.

**1556.** The *difficulties* usually met with in adjusting are not now so prominent as in former years, when a loosely drawn and indefinitely worded policy often caused the adjuster much trouble as to the construction it would bear where non-concurrent clauses were found in antagonism upon the same loss; presenting at times seemingly opposing liabilities, rendering it difficult to arrive at definite results, and then only by compromise. Fortunately, with few minor exceptions, in all material points policies are now so far in harmony as to cause but small difficulty from this source in the adjustment of contribution to losses among co-insurers.

**1557.** A prominent cause of difficulty has been, and will continue to be, *dishonest* insureds, who are "on the make," decimating insurance companies fair game for their practice. They must be watched and manipulated according as their aims and objects are more or less developed; masterly inactivity and constant scrutiny will go a long way toward meeting such fraudulent attempts.

**1558.** It also not unfrequently happens that honest but ignorant insureds will cause trouble from ignorance of the most ordinary forms of business. With little idea of the meaning of an insurance policy, or their rights under it; obstinate, avaricious and suspicious; prone to over-valuation of their loss; without books of account or other vouchers upon which even an approximate estimate of the loss can be safely based; and, while thus unable or unwilling to afford assistance in arriving at the amount of loss, they are, nevertheless, ready at every turn adverse to

their claim to charge the adjuster with attempts to defraud them of their rights.

**1559.** And, that worst of difficulties—the *want of some definite and uniformly recognized rule* for the apportionment of contributive insurances among co-insuring companies under non-concurrent policies. Under present practice each adjuster is a law unto himself, and the result is confusion and uncertainty where precision and uniform certainty should prevail. (2096.)

**1560.** To this should be added the need of *properly trained adjusters*, educated in the school of experience, and competent to handle properly the most complicated cases. The practice of intrusting the *reputation* of a company, in addition to heavy *pecuniary* responsibility, to inexperienced, not to say reckless or unprincipled men, as is too frequently done, is not only prolific of *difficulty*, but pregnant with danger, either from the insured, resulting in vexatious law-suits, or from other more skillful adjusters upon a common loss; or the company otherwise suffers from the incompetency, if nothing more, of its adjuster.

In addition to these, companies employing incompetent, inexperienced men as adjusters *pay heavy tuition fees*; for, as a rule, it costs many thousands to educate a man to a fair degree of proficiency as an adjuster. Who is to foot the bill in such cases becomes a serious question.

**1561.** All adjustments should be made without unnecessary or vexatious delays. *Honest claims*, fairly established, should be as fairly met and liberally construed, and the insured should, in all cases, receive the full indemnity contemplated by the contract. With as much propriety would a solvent merchant ask for rebate upon his maturing bank-paper, beyond the legitimate interest, as a solvent insurance company would endeavor to reduce the amount of an ascertained *honest* loss below the indemnity guaranteed by the insurance contract. Yet "sharp" adjusters pride themselves upon the amounts they have been able to *save* (?) for their companies by making salvages upon honest total losses.

**1562.** When a loss has a suspicious look, and the adjuster is morally certain that there is something hidden, it may be well to meet the claimant upon his own ground, and pit "sharpness" *vs.* "dishonesty."

**1563.** This matter of "abatement" would seem to be no new thing in the adjustment of loss, for we read in *Leybourn's Panarithomologia*, A. D. 1693, of similar cases in his day. He says:—

"When they are satisfied there is a real loss, there is generally an abatement of ten per cent. for prompt payment; for, if they are punctual men and value their reputations, they will presently pay you; if not, they will shuffle you off and endeavor to find out flaws, and raise scruples for a larger abatement than ordinary, and sometimes will keep you a year or two out of your money, and many times never pay, but get, in case of loss, fifteen or twenty per cent. abated. I have known forty per cent. abated on very small pretensions, which makes a common proverb about such insurers: 'What is it worth to insure the insurers?' Be careful, therefore, to deal with honest men that value their reputation, when you have anything to be insured."

**1564.** Where, after the adjustment and fixing the amount of the loss-claim, "subject to the terms and conditions of the policies," in a subsequent action against the insurers, the Supreme Court of Rhode Island construed the adjustment as meaning: "subject to *all* the terms and conditions of the policies" *not* superseded by the agreement; and that the question of liability was not affected by this adjustment, which only determined the amount due in case of liability. (*Whipple v. N. B. & Merc. Ins. Co.*, 11 R. I. 139, 5 Ins. Law Jour. 71-81; *Russell v. Dunskey*, 6 Moore 233.)

#### LEGAL DUTY OF ADJUSTERS.

**1565.** The fact that the insurance contract is *uberrimæ fidei*—of the *utmost* good faith on *both sides*—seems frequently to be entirely ignored. While the insured is held to a strict accountability as to the good faith of his representations, he is usually considered fair game for the "whack" adjuster to make the most out of, in case of loss. Adjusters, as a class, seem to

be ignorant of the fact that the law requires equally good faith on the part of the companies and their agents, in the discharge of the obligations imposed upon them by the insurance contract, and that any tangible misconduct or misrepresentation of the rights of the insured, by which he may be influenced to his own injury, "*amounting to a breach of 'legal duty' arising out of the confidential relations requiring the utmost good faith in mutual dealings,*" will be a valid cause of action against any company so offending. And Chief Justice CAMPBELL, of Michigan, says: "There is no class of cases more readily relieved in equity than such abuses." (607, 613.) (*Mayhew v. Phoenix Ins. Co.*, 23 Mich. 105, 1 Ins. Law Jour 450.)

Marsh. Ins. 352; 1 Black. Com. 594; 3 Burr. 1909; 3 Carr. & P. 353; *Derrick v. Lamar Ins. Co.*, S. C. Ill., 5 Ins. Law Jour. 42; *Aetna Ins. Co. v. Reed*, S. C. C. Ohio, 8 Ins. Law Jour. 350, and authorities cited.

#### THE ADJUSTER.

**1566.** If adjusting be an ART, then is the thoroughly competent adjuster an ARTIST of no mean order of talent; for there are few business professions requiring so many *essential* qualifications to cope successfully with the multitudinous phases presented by complicated losses, whether the complications arise from conflicting non-concurrent policies, or from the villainies of shrewd operators bent upon fleecing insurance companies.

The *adjuster's* office is really judicial—not one of simple routine; large amounts not unfrequently depend upon his honesty, vigilance, skill and judgment. He is often called upon to act where precedents may or may not exist, and, if existing, are not always apposite, or to be pleaded for or against the admission of claims in a statement. Hence, he should be a prompt and ready thinker; possess a general knowledge of law and of business transactions, and endowed with quick perception to take in at a glance the exigencies of his position, and act promptly as the case may require.

It has been said that in the *legal* profession, all knowledge, whether mechanical, scientific, or miscellaneous, sooner or later becomes useful and desirable in the performance of professional

duties. This is especially so with the *adjuster*. He should be a combination of *merchant, mechanic, underwriter, lawyer*, and DETECTIVE; he should be sufficiently discreet at all times to avoid giving offense by his manner: should possess the rare faculty of saying unpleasant things, when necessary to be said, in a way calculated to avoid unnecessary irritation. The exhibition of anger and harshness on such occasions tends only to the injury of his case, while "the soft word turneth away wrath," and an unreasonable man not unfrequently yields to words fitly spoken when he would resist, or submit grudgingly, if he must, to harsh and intemperate language. Our most prominent *adjusters* possess this gift, and to its proper exercise is due much of their uniform success in their calling.

**1567.** In examining into the particulars of a loss-claim he should act with circumspection and moderation, so that neither the sufferer nor his friends can have cause to impugn the fairness and liberality of the settlement; while at the same time, as the laws are the only safeguard for the company against unjust and fraudulent claims, he should be fully satisfied of the fair dealing of the claimant, to induce him to waive any legal rights. And just here, when the standing of the claimant and the honesty of the loss are beyond question, an inexperienced adjuster might be thrown off his guard. Many good men, at such times, are disposed to make the most of the fire, estimating in their own minds various items of loss not covered by the contract, and satisfying their consciences that they are not getting more than their actual loss.

**1568.** To a fair share of energy and industry should also be added discrimination, experience, sound judgment, and decision of character, to be able to say "No," and adhere to it. The shrewd claimant is apt to discover any vacillation, and to take advantage of it to his own benefit. Above all, he should be patient and persevering in a high degree; not easily discouraged by the obstacles met with in the discharge of what may at times be an unpleasant task, for the correct adjustment of complicated losses is no child's play. Finally, he should not

be over-anxious to anticipate either the time of payment—as the customary delay may save the claim (1694)—or the time of the starting of the next train of cars.

The best *adjusters*, in the honest discharge of their duties, cannot always fail to give offense. Even among *business men* he is not unfrequently called exacting, when he simply insists upon the same vouchers for his company, before paying a claim for loss, that would naturally and without question pass between merchants in an ordinary settlement of business affairs—there being this difference, however, against the adjuster: he must depend largely upon the honesty of the claimant, the subject of the settlement *being in ashes*, and not producible in evidence.

In view of the many qualifications essential to the forming of a competent adjuster, it may not be inappropriately said of them as a class, as of poets, “they are born, not made.” Nevertheless, however well fitted a man may be by natural aptitude for the profession, he can only become proficient by possessing a thorough theoretical as well as practical knowledge of the principles of fire underwriting, for, as EMERIGON says:—

“When one wishes thoroughly to acquire a subject, theory is not to be neglected; it serves to develop principles—through it we become learned in an art; but to be a master in that art, practice must be joined to theory.”

And just here it is that so many adjusters fail in ability to cope with complicated cases, which a theoretical knowledge of the subject would enable them to comprehend and master with little or no difficulty.

The great want of the profession is *educated* adjusters. Adjusting should be as much of a profession and require as much previous theoretical and practical training as that of lawyer, doctor, engineer, or other member of any of the learned professions.

The sooner this fact is realized, and steps taken to effect this end, the sooner will the difficulty now attending complicated adjustments be avoided.

## DUTIES OF AN AGENT,

## IN CASES OF LOSS.

**1569.** *In cases of loss by fire, in the absence of a special adjuster, the local agent should identify himself heartily with his company, and act upon the defensive, so far as necessary, until he can hear from the parent office. He should fully comprehend that he is the representative of his company and not of the insured: "A man cannot serve two masters." He should also understand that, while it is not expected that he will seek to take undue advantage of any party, it is confidently expected that he will watch closely to prevent any party taking improper advantage of his company, either by accident or design. As such representative, he should be especially careful, in doubtful cases, not to commit his company to a recognition of any claim, or to any definite line of policy as to the adjustment, without special instructions from the parent office; for, inasmuch as the laws are the only safeguard for the underwriter against unjust and fraudulent claims, so no legal point in favor of the company should be unadvisedly waived or surrendered, either by act or implication, until the proof submitted shall have been made entirely satisfactory in all of its details, or the claim may have been compromised. If the loss be a just one, it cannot be injured by scrutiny. Undue haste, on the part of a claimant, is suggestive that something behind needs investigating; while feverish anxiety on the part of the local agent to hasten the closing of the claim, "because other companies have paid," indicates both want of experience and lack of judgment.*

**1570.** The several points to which an agent's attention should be directed, in handling a loss claim, will be indicated by the term "STEPS," each step embracing some essential point, as may be suggested by attendant circumstances of each case. These instructions have been made *suggestive*, with a view to inquiry in appropriate directions.

## FIRST STEP.

**1571. Notice of Loss :** When a case of loss or damage under a policy of his company, whether large or small, comes to his knowledge, the local agent is required to notify the parent office IMMEDIATELY—*by telegram when the amount is large, or immediate attention may be needed*—giving number of policy, probable loss, partial or total, with the amount of other insurance, if any ; *to be followed*, with as little delay as possible, by *letter*, giving particulars more fully *as to whether knowledge of such loss was obtained directly from the insured or his agent*, in accordance with the conditions of the policy, or from other sources ; also the names of co-insuring companies, if any, and amounts covered by each ; whether such loss was caused directly by the fire, or only by removal of the property ; together with such other information touching the loss or damage as may be known or suspected at the time. (**2321.**) *This is imperative !* The agent should be especially careful that he does not incautiously *waive* some right of the company, in the matter of *notice of loss* to the company. In contested cases the want of proper *notice* is an effective point in the defense. (**1629.**) The agent should make especial note of the time of receiving such notice, and whether *from the insured or his agent*.

Claims for indemnity, in cases of alleged loss or damage by fire and its consequences, are often largely overstated, and not unfrequently entirely fraudulent. In such cases it frequently occurs that the first intimation of a claim comes from claimant's lawyer. Such cases need especial consideration, the claimant evidently doubting his own case.

**1572.** In cases involving large amounts, or likely to prove intricate in the settlement, a special adjuster is usually sent from the office ; but smaller cases may be left to the local agent, who will be much enlightened as to his own duties and the reserved rights of his company, by an attentive study of the printed "*conditions of insurance*," as given in the policy, and by correspondence with the parent office, when necessary.

## SECOND STEP.

**1573.** *Preservation of the Property:* AFTER notice of the loss has been received from the insured and promptly forwarded to the company, and until advised by the parent office, the local agent should look after the interest of his company. He should see that the owner, whose duty it is, under the conditions of the policy, makes proper and timely effort to preserve from further injury or deterioration the property saved, whether sound or in a damaged condition. If necessary for its proper preservation and care, it should be removed to another building, under the supervision of the agent, or some person employed by him, should the owner neglect such timely precaution. (1679.) *No steps should be taken, however, in acknowledgment of the claim until due notice has been given by the insured.*

**1574.** The impression that property must remain for the inspection of the underwriter after a fire, just as the flames and the water leave it, without making any effort to prevent further damage, is a mistaken though very current notion among insureds. They should proceed in caring for the property as if no insurance thereon existed. The condition of the policy requires that :--

The best endeavors of the assured shall be used in saving and protecting the property from damage at and after the fire; and in case of failure so to do, this company will not be liable for damage caused by such failure. (1685, 1770.)

1 Magen's Essays 77; 2 Valin Comm. 133; Case v. Hartford F. I. Co., 13 Ill. 676; Angell Ins. 177, § 132; Shaw's Ellis F. Ins. 55.

**1575.** As representatives of the underwriters, agents and adjusters have the right of access to, and a general supervisory interest over the remnants of property covered by their companies, until after inventory and appraisal, when all the company's interest therein ceases. This authority *should always be exercised when necessary for its security or preservation from further damage.* A forcible entry would not be justifiable, nor can the

access of the insured to the salvage be prevented. (Bunyon Ins. 48, and authorities cited.)

**1576.** Should the owner object to such supervision, or refuse or delay, to the detriment of the property, to have it properly attended to, he will do so at his own peril. The agent will at once notify the parent office of the fact—*by telegram in special cases*—and await advices. Should delay, however, involve no immediate injury to the property, action by the local agent may be deferred until the arrival of an adjuster, or definite advices be received from the company. **(1785.)** In dubious cases delay may be advisable, but it is none the less the duty of the claimant to take proper care of the property.

**1577.** Especial attention should be paid to such articles as tobacco, drugs, books and stationery, also shelf hardware, cutlery, stove and tin ware, and similar stocks which rust quickly. *Wet goods*, millinery stocks, and such like, should be opened without, needless delay, and spread out to dry, to prevent mildew, stain or mold arising from heat or dampness.

Any *perishable property*, which would materially injure by delay, should, by mutual consent, be submitted to appraisers as soon as possible, as every day's delay adds to the damage; or if delay would render it likely to be *totally destroyed*, it should be sold at auction, or at private sale, by agreement with the claimant, for cash, *for and on account of whom it may concern*. **(1704.)**

Further instructions upon the duty of local agents, in regard to damaged goods, will be found explained under the head of *Appraisement of Damaged Goods*. **(1783.)**

### THIRD STEP.

**1578.** *Investigation of the origin of the fire:* While attending to the proper preservation of the goods or other property, the local agent should make diligent inquiry as to the origin of, and circumstances attendant upon the fire, *the*

*more especially if originating upon the premises of the insured*, so as to be prepared to communicate the results of his investigations—either to the adjuster on his arrival, thus giving him a clue to work upon, or by letter to the company.

This is one of the most important duties of an adjuster, in view of the number of dishonest losses. The most searching scrutiny should be made into every loss claimed to arise from *causes unknown* upon insured's premises. Such cause may be a very simple, natural one, which a little judicious inquiry would bring to light; or it may be the result of a well-concocted plan to swindle the insurers, and should be strictly inquired into for the detection of fraud and imposition, if there be any, without reference to the good character and moral standing of the insured. If honest, it is to his interest as well as that of the company that the cause should be known; no *false* delicacy should be allowed to interfere with the search for facts (**1591**), for, while investigations are absolutely necessary for the detection of fraud and speculative impositions, they cannot do injury to an honest claim. (*Norman v. Ins. Co. N. Am., U. S. C. C., Dist. Ill., 4 Ins. Law Jour., 827.*)

**1579.** As a principle, no loss should be paid until the cause of the fire, when originating upon the premises covered by insurance, is discovered. It unfortunately too often occurs, even in honest losses, that the insured make no effort to investigate the origin of the fire themselves, being usually content to attribute it to incendiarism, or some other equally improbable cause, and then wonder why the underwriter does not pay the loss upon this meagre, unsatisfactory explanation. Such losses should never be paid until after the expiration of *sixty days* allowed in the policy; or until the company is satisfied that the origin cannot be discovered. This delay, systematically persisted in, would work a thorough reform in this important matter; and the insured, knowing that the payment of his loss depended upon his giving a reasonable and probable cause for the origin of the fire, would, if honest, at once institute inquiries to that end, and render the agent or adjuster some assistance in this direction. (**1964.**)

In no other business is money so freely paid out, and upon such weak showing, as in the payment of losses by insurance companies; and until this is reformed, there will continue to be losses, and the "cause unknown" will sap the life-blood of the companies.

**1580.** In seeking for the "cause unknown" of fires upon the premises many circumstances should have consideration, among others, the following:

*First:* At what hour of the day or night did it occur? When first discovered? By whom? In what part of the premises? Accessible or remote? Under what circumstances?

*Second.* As to the insured and his possible agency in the fire. His moral character, standing, and business circumstances should be weighed; his antecedents should be inquired into. Was he at home or absent at the time of the fire? Has he been burned out before? Was he insured? Did he recover the insurance? Any suspicious circumstances attending such fire? Did he lose anything above the insurance? Is he now involved, or over-loaded with an alable stock on a falling market? Is he owner of the property, or is it leased—in litigation or unproductive? Has he made any attempts to sell? Is he over-insured? In fine, do circumstances indicate, in any way, that it would be an object for him to sell to the underwriters?

*Third: Attendant circumstances:* Do they indicate anything suspicious? Is incendiarism apparent? Are there grounds for any suspicion against personal enemies? Any cause for spontaneous combustion or explosion about the premises? Had the premises been regarded as a nuisance from any cause by the neighborhood? Are there indications of carelessness or design on the part of any one? Any threats? Opportunity for theft by employees, or to cover up defalcations?

Diligent and patient research is not unfrequently rewarded by the discovery of the "*unknown cause*," which, if it does not tend to release the company from liability, does satisfy the adjuster as to the fairness or unfairness of the claim, and enables the company properly to classify the risk, and thus obtain reliable data as to causes of fires.

## ORIGIN OF FIRES.

**1581.** Many underwriters claim that fires from *natural causes* are small in number as compared with those having their origin in *fraud*; yet doubtless many of the fires attributed to incendiarism are the results of unsuspected, hence, undetected, natural causes.

Fires may be said to originate from *three primary causes* — *accident, carelessness, and design.*

**1582.** By **ACCIDENT**, as arising from well-known *natural causes* without the immediate, wilfull intervention of human act; such as defects in chimneys and heating apparatus; friction of machinery running in wooden journals; explosions; spontaneous combustion; illuminations; pyrotechnic displays; sparks from locomotives; defective stove-pipes, proper vice (**1711**), and more recently the electric current, with numerous other elements or causes, which the inventive genius and multiplying resources of modern science are constantly increasing.

*Friction develops electricity:* a machine belt, at high velocity, becomes highly *electrical by its friction with air only.* It is a common experiment to light gas-burners by holding the knuckles of one hand near a rapidly moving belt, and a finger of the other hand to the open burner.

In cotton mills lint has been known to be set on fire by this cause, the electric sparks being drawn in a constant stream by the head of an iron bolt *fourteen* inches from the belt.

**1583.** **SPONTANEOUS COMBUSTION** is one of the most subtle and secret enemies that the underwriter has to deal with. It is the cause of a large proportion of accidental fires, and not a few of those justly originating in incendiarism. It is well known that, under certain conditions, numerous articles of commerce are liable to generate heat enough to cause flame, either spontaneously or by contact with inflammable materials, and cause consequent destruction. The improper mingling of, or want of due care in the storing of certain kinds of goods,

frequently causes *spontaneous combustion*. Greasy rags, iron borings in which oil has been dropped, oiled clothing, cotton waste, woolen waste, newly varnished harness used in weaving, fine coal in quantities, powdered charcoal, will all ignite spontaneously under certain circumstances.

Many fires are doubtless caused by a violation not only of police regulations of cities relative thereto, but of the plainest principles governing the storing or use of such articles as coal oil, naphtha, benzine, gasoline, benzole, nitro-glycerine, and other similar combustible and explosive substances. The constant handling of and familiarity with these dangerous materials, engendering a feeling of false security and temerity, and consequent carelessness, from the results of which the community is the sufferer.

An extended list of inflammable, combustible and explosive materials—their name is legion—with the various combinations in which they have been known to ignite and explode spontaneously, would be an interesting and instructive study to the insurance agent, and, if properly digested by him, would save insurance companies large sums of money in the course of the year upon risks to be refused in consequence of their liability to loss from these causes.

**1584.** EXPLOSIONS are another fruitful source of fires. Various trades and occupations are more or less liable to have *explosions* occur in the ordinary prosecution of their business; such as brass and iron foundries; soap and candle factories; where steam boilers are used, and where inflammable gases are generated in various processes of manufacture. Such dangers usually arise suddenly and unexpectedly, and cannot be foreseen or warded off by ordinary precautions.

**1585.** KEROSENE : *Coal oil or Earth oil*, no matter how pure, when exposed to heat from fire, or from the rays of the sun, will exhale more or less of a light carbonated-hydrogen gas, which is exceedingly explosive. This is the cause of the *explosion* of lamps filled while lighted, or when but half-full of oil, the vacancy being filled with the gas generated by the heat of the flame.

Any agitation or shaking of the vessel containing these oils, or motion of the oil itself, as in running, will generate this gas in quantities. And it will exhale even when undisturbed; the dropping of a lamp near a leaky barrel of coal oil has been known to cause an explosion of this gas. And it is a notorious fact that numerous accidents by explosion have arisen from drawing kerosene and its products in the vicinity of open lights.

Yet, despite these reiterated *explosions* from the handling of coal oil or kerosene, under its multifarious names, and the numerous and constantly recurring deaths therefrom, insurance companies will continue to write, and allow their agents to write policies permitting its use and sale without restriction or limit as to time or circumstance.

**1586.** Recognizing the necessity for some check upon this growing evil, the NATIONAL BOARD OF FIRE UNDERWRITERS, some years since, promulgated a *rule*, in the matter of earth oils and their products, in words following:—

“In all cases where permission is given in policies for keeping and selling *petroleum, gasoline, naphtha, benzine, kerosene*, carbon oil, and other similar articles, the products of petroleum, or permission is given for the using of kerosene, carbon, and other similar oils, for lights, an additional clause *must* be inserted, *requiring them to be drawn by daylight only, and without the use of artificial lights of any kind*, and the lamps to be filled and trimmed by daylight only, and also without the use of artificial light.”

It is fortunate for the community at large, and incidentally for insurance companies, that some of the chief cities have adopted measures to control the sale of kerosene, and its products by confining them to standard qualities.

**1587.** BY CARELESSNESS: either *intentional or reckless*; or by simple *remissness or gross negligence*, as in the use of matches, filling lamps with inflammable oils by artificial light; putting hot ashes into wooden receptacles, or from fire-works. It appears from the statistics of fires in every large city in our Union, that *thirty per cent.* have been traced to the deposit of ashes in wooden boxes or barrels, where heat sufficient to cause

fire has been retained for weeks. The great fire at Portland, in 1866, arose from a single Chinese fire-cracker, carelessly thrown into a boat-builder's establishment on the fourth of July; amount lost, \$10,000,000. Also, from the careless use of lights in drug and other stores, when drawing alcohol, coal oil, and similar substances, after dark, or in cellars away from daylight. (*Chanden v. Ins. Co.*, 3 Cush. Mass. 328.)

*Recklessness and gross negligence are apt to prevail in exact proportion to the demoralization of business*; fires being much more frequent and extensive during dull seasons, and in times of financial pressure, than when the mercantile community moves swimmingly on. *Dull times and a falling market are great promoters of fires.* (1770.) (*Mickey v. Ins. Co.*, S. C. Iowa, 2 Ins. Law Jour. 18.)

**1588.** BY DESIGN: As from *incendiarism*, with a view to robbery of the premises during the confusion consequent upon the fire. (*Gates v. Ins. Co.*, 1 Seld. N. Y. 169.)

Or, to cover up *defalcations* and previous *robbery*, as in warehouses, elevators, and cotton risks. Unfortunately, too many instances of this class of losses are on record where temptation was strong and opportunities were frequent, until detection became imminent, and the torch was applied to conceal the delinquency. Entire car-loads of grain have been known to be thus appropriated, which upon the books of the company *appeared* as having been stored in the elevator. The result was the destruction of the elevator by fire. The underwriters had paid the supposed loss, in one instance, before the rascality was discovered.

Or, through *hatred and revenge* against owner or occupant of the premises.

Or, through *fraud*, for the purpose of realizing upon a falling market; or induced thereto by heavy *over-insurance*, obtained through reckless competition of irresponsible companies. *Speculative* losses have cost underwriters heavily, and will continue so to do as long as insurance can be so easily obtained upon such insufficient representations.

**1589.** INCENDIARISM AND ARSON: The great facilities offered by well-known properties of certain combustible and inflammable materials, easily to be obtained without exciting suspicion, render *incendiarism* and *arson* of easy accomplishment when once resolved upon. It has been most tritely remarked, that—

“Of all the crimes known to the law, *incendiarism* most effectually baffles justice; and of all fraudulent agencies brought to bear upon insurance companies, it is the least liable to detection, and the most seldom punished.”

While recent improvements in science have done much to facilitate and increase the crime of *arson*, it has been further greatly encouraged and stimulated by the temptation held out by hasty and ill-considered adjustments, and the payment of claims without due investigation.

**1590.** The decisions of the courts upon the subject of *arson*, as connected with fire insurance, are somewhat conflicting as to the strength of the evidence needful to bar recovery, when the defense set up is that the insured set fire to the premises. The burden of proof is upon the companies so charging.

In all insurance suits, being only civil actions, the rule of evidence is the same as in ordinary cases—the jury may find the issue upon the weight or preponderance of the evidence. (Dillon, U. S. C. C. 105; 4 Biss. C. C. 265; 7 Wis. 169; 37 *id.* 31; 62 Me. 356; 11 Bush Ky. 587; 10 Vroom N. J. 677; Stitz v. State Indiana, 15 Ins. Law Jour. 386.) *Fraudulent intent* must be shown, however, which may be done by direct or presumptive evidence, and need not, necessarily, be such as would convict on a criminal prosecution for arson. (Mack v. Ins. Co., U. S. C. C. Dist. Mo. Mar., 1880.)

Regnier v. Ins. Co., S. C. La., 1 Benn. F. 1. Cases 670; 29 Ga. 105; 24 Ark. 44; 16 Mass. 105; 40 Ala. 669; 16 Johns. N. Y. 203; 3 Fred. N. C. 590; 5 *id.* 350; 5 Cuth. Mass. 427; 29 Mich. 50; 1 Carr. & M. 541; 32 Cal. 160; 37 *id.* 175; 46 *id.* 354; 50 *id.* 306; 53 *id.* 627; 8 Grat. Va. 624; 2 Md. 376; 19 Iowa 230; 47 Ill. 533; 19 N. Y. 537; 51 N. H. 176; 66 Me. 307; 3 Dutch N. J. 323; 12 Conn. 487; Mo. 384; 7 L. C. R. 343.

## CORONER'S INQUESTS UPON FIRE LOSSES.

**1591.** In view of the fact that so many fires have their origin in fraud and dishonesty, where the property is protected by insurance, the necessity for some general law for the investigation of all fires, the subject has been recently extensively discussed through the columns of the insurance journals of the country, and the attention of State officials called to its importance, where no such law exists, with a view to placing the matter before the several legislatures for proper action. In 28 States arson with intent to defraud insurance companies is a specific offence to which is attached a penalty. The States of New York, Pennsylvania, Rhode Island, Nevada, and Canada (Cons. Stat., c. 88) now have such laws, while several of the larger cities, New York, Boston and Montreal among them, have Fire marshals, whose duty it is to carefully investigate every fire loss, and take steps to bring the incendiary to an account for his misdeeds.

**1592.** Such laws properly enforced, and the guilty punished, cannot but have a deterrent effect upon the would-be incendiary to the benefit of the community generally and the insurance companies in particular; and were fire losses limited to honest causes only, the rates of premium could be materially reduced, as it is the losses that make the rates.

No greater safeguard against dishonest losses could be found, than a close scrutiny by proper officials into the cause of every fire.

## FOURTH STEP.

**1593.** EXAMINATION OF THE RISK, *at the time of the fire, with reference to the terms of the policy, and the representations and warranties in the application and survey which should always be present for examination and reference.* (195.) The agent should carefully read the written portions of the policy, and the representations made in the survey and application, to discover if any changes material to the risk

had been made since the policy was issued, either by changes in occupancy (**1116**); ownership; identity of property (**1761**); other insurance not consented to by indorsement upon the policy (**987**); over-insurance, accidental or intentional; incumbrances of any kind not recognized by the contract; assignments or transfers of the policy or the property not authorized (**1060**); attachments, levy, or any other judicial proceeding against the property; keeping or storing of prohibited articles (**1131**); or by additions, alterations, or other causes affecting the validity of the insurance. (**1111**.)

The printed *conditions* of the policy should be carefully scanned, for the purpose of detecting any *willful* or other violation by the insured; they are to be constructed *liberally*, but not *loosely*. (**187**.) It will not unfrequently occur that the stipulations of the policy will be violated in the letter, though not in the spirit through ignorance of their requirements, and not from willful intent; such cases will always receive due and proper consideration at the hands of a competent adjuster.

**1594.** All variations, discrepancies, changes, or alterations, and any information or suggestions arising from the investigation of the policy and the application, should be carefully noted for use, should any contingency arise wherein it might be available in assisting the company in obtaining a recognition of its legal or equitable rights.

#### FIFTH STEP.

**1595.** EXAMINATION OF THE PROPERTY: Is it a regular business establishment? Wholesale or retail? Or an *ancient* stock? Or a *branch* store? Anything of the *dollar-store* about it? If so, scrutinize values closely, as such stocks generally consist of cut goods, remnants, refuse or damaged articles.

What is the general condition of the stock? Old shopkeepers, or new and fresh? What was its value at the time of the loss? Heavy stock on falling market?

Did claimant purchase the stock *new*, or from some retiring firm unfortunate in business? What was the stock thus purchased—mostly remnants—shop-worn, or new and fresh? For cash, trade (barter), or on credit?

What BONUS was paid for the *good-will* of the business? *Good-will* is not covered by the policy.

Is it the same class and kind of stock as that covered by the policy when issued? Any change in the business since? **(1761.)**

Have the goods, or any portion of them, appreciated or depreciated in market value since their purchase? What is the depreciation for old and shop-worn or unfashionable stock?

*Leakage, breakage, shrinkage*, or other proper vice—how much caused by the fire? **(1711.)**

*Stealings*: What is the average loss of the establishment yearly by *theft*? On certain classes of stocks, this is no inconsiderable item, and should not fall upon the underwriters. Is any account kept of such losses?

How much is annually taken out of the stock by members of the firm, for personal or family use? Is it always charged in account?

If there be suspicious circumstances attending the fire, had the employees any hand in it to cover up stealings or defalcations? What are their circumstances—habits? *Fast* young men? Wine, women, and cigars? Does salary pay?

Any portion of the stock not covered by the policy, as safe, fixtures, scales, tools, or implements? Any goods held on commission, storage, in trust, sold but not delivered? Are they so enumerated separately?

**1596. SALVAGE:** What is its condition? Has it been properly manipulated to make the most out of it for the benefit of the underwriters? Has it been appraised fairly and satisfactorily? Any secreted goods, saved by other parties? **(1779.)**

In looking into a claim for loss or damage upon stocks of merchandise, it pays well to scrutinize the *remnants*, and seek

among the *ruins* for evidence corroborating or impeaching the fairness of the claim. Many kinds of goods, especially those combining wood and iron in their manufacture, leave indubitable evidence of their presence before the fire; tubs and buckets, as well as liquor casks and kegs, have iron hoops which will not burn; and the iron of implements with wooden handles, as well as queens-ware and glass-ware, still remain unconsumed. Do they tally with the proof?

Was the damage caused directly by the fire, or by the removal of the property? Was anything stolen during removal of the property? (1536.)

Have reliable appraisers been selected? (1783.)

If the damage be upon MACHINERY, has it been properly cleaned up and put into as good order as possible for appraisal? Has the appraisalment been made by a skillful expert? (1793.)

**1597.** If the claim be for damage to a BUILDING, what was its condition at the time of the breaking out of the fire? In good state of preservation, or old and dilapidated? Occupied or vacant? Profitable investment, or losing money? Under mortgage or other incumbrance? Mortgagee any insurance? Over-insured? Can it be profitably reinstated? Is it better to pay than rebuild? (1835.) Is it on leased ground and so stated in the policy? (689.)

## SIXTH STEP.

### EXAMINATION OF BOOKS OF ACCOUNTS.

**1598.** It is too frequently the case that the books of the claimant are taken as vouchers without sufficient scrutiny. On them and their correctness depends the basis of the adjustment. No more credit should be given them than a critical examination will entitle them to. The following hints and suggestions will be of service in this connection: (1900, 1951.)

Examine *stock accounts*: where did the capital come from? What is the result, profitable or otherwise, heretofore?

*Merchandise account*: does it show rebates or discounts to customers, or goods returned to purchasers, or deficiencies in purchases? Does it show purchases and sales fully? Any stock in *branch stores* or *peddlers' wagons*? If so, is it duly charged? *Stock absent in peddlers' wagons has been paid for as loss before now.*

*Personal accounts* of members of the firm: do they show goods or money taken out?

*Invoices of purchases*: are they forthcoming, and do they correspond with the merchandise account? (1942.)

*Inventories of stock*: how often taken? Have they been made upon the basis of *present cash values*? When last taken? Amount? Any allowances for remnants, cut goods, broken packages, old and unfashionable stock? Does it include any property not under the protection of the policy? How much? Branch stores or peddlers' wagons included? *Inventories* will need the closest scrutiny to protect the interest of the company. (1746.)

Do the *books of account* present evidence of having been honestly kept by an experienced accountant? Are results clearly stated? Are they duly certified to and proven correct by the parties who kept them? Do they sustain the claim as made? Or, on the other hand, have the books been tampered with, or made up for the occasion?—a circumstance not at all uncommon. (1942.)

Has the business been profitable? Any heavy losses to cripple the means of the claimant? Does the *bill book* show need of cash to meet accruing notes? Are there abundant means to meet them? Or, was the payment dependent upon current sales? If so, what was the prospect? Any pressing *chattel* or *other mortgage creditors*?

**1599.** It often happens that *no books of account are kept*; or, if kept, it is in so careless a manner as to afford but small service in the proper adjustment of the loss. In such cases the parties usually rely upon memory to make up the deficiency; and it is a remarkable coincidence that in all such cases the claimants have such excellent memories, that they can remember

*almost the exact amount of stock of each kind of goods on hand at the time of the fire.* Another uniform coincidence in such cases is the fact *that the amount so well remembered is usually large enough to swallow up all of the insurance!* Agents should scrutinize such cases very closely. Here is work carved out for an old and experienced adjuster, if anything is to be saved for the underwriters. (1605.)

**1600.** When the *books and papers of the claimant have been destroyed by the fire*, no fixed rule can be given as to the manner of procedure. The burden of proof resting upon the assured, he must find vouchers of some satisfactory kind to sustain the claim; and these vouchers should be most thoroughly sifted (1942.)

**1601.** Many times the claim that *books of account have been burned is fraudulent.* In numerous instances new books have been fabricated or old ones made up for the occasion, showing a heavy balance against the insurers. All of these should be most critically examined, and the claimant should be made to produce *satisfactory* evidence before the claim is admitted.

The course usually pursued in such a contingency, and where no books have been kept, is to call for *duplicate bills of purchase* for some time back, as stipulated for in the policy, and such other documentary evidence as can be procured that will throw light upon the subject. (1897.)

**1602.** Unfortunately, however, the insurer cannot compel the claimant to furnish such duplicate bills of purchase, or other documentary evidence *not under his control*; but he must furnish some *satisfactory* proof of his loss.

The suggestions here are: *Were the books of account and other vouchers burned?* If the duplicate invoices of purchases and other proper vouchers are *not* forthcoming, why not? If produced, *are they genuine?* Forged invoices upon the printed headings of regular houses have been heretofore produced as vouchers in proof of loss. (1942.)

**1603.** What is the average rate of profit as indicated by the books? What is the average rate of *freight* paid upon purchases? (1748.)

If a manufacturing establishment, is the *labor* account duly vouched for? How does it compare with the time book?

**1604.** EXAMINATION UNDER OATH: It may be necessary at times to examine the claimant "under oath," as provided for by the terms of the policy, in which case he must answer all questions touching the loss. (1957.)

**1605.** In case of "MEMORIZED STATEMENTS," it is well to test the memory of the claimant by asking questions pertinent to the entries, as "How many of such an article did you have?" and so on, occasionally interspersing an item or article not in the bill. This will be a severe *test*, but a just one. (1599.)

A notable case of the uncertainty of *memorized statements*, even when honestly made, occurred in the adjustment of a Chicago loss. The claimants swore to a loss, *from memory*, of some *one hundred and forty three thousand dollars*, which loss was found as ascertained from the ledger subsequently, to be less than *ninety thousand dollars*.

Another similar case occurred, where the members of the firm and their two principal clerks made estimates ranging from *forty* to fifty thousand dollars, *from memory*, and the ledger subsequently found showed less than *twenty-nine thousand dollars* as the extent of the stock.

In both of these cases the estimates were, doubtless, honestly *guessed* at—that is, there was no intention to deceive. But memory in such cases is a treacherous reliance. In the matter of household furniture, it may be that a man and his wife might together recollect very nearly what furniture was in each of the rooms of their dwelling; but, for a merchant doing business to any extent, to claim to remember just what amount of stock he might have on hand at any particular time, would seem, if not impossible, at least improbable.

**1606.** The following results, gathered from the books of account, form the basis of SCHEDULE B of the *preliminary proofs* (2350) upon mercantile losses:—

What was the amount of the last regular account of stock—gross value?

How much of it was not under the protection of the policy?—furniture, fixtures, commission goods, etc., etc.

How much stock had been purchased since the account of stock was taken, up to the time of the fire?

How much of these purchases had been returned from any cause, or is not noted among the stock covered by the policy?

What is the amount of sales, for cash or credit, from the date of the last account of stock up to the time of the fire? Is anything included in those sales not covered by the policy? Any rebates or discounts allowed for cash payments not noted? Goods sold have been paid for as *lost* before now.

What is the amount of goods saved in sound condition—present *cash* value?

What is the *sound* cash value of the damaged stock, as returned by the appraisers?

What *depreciation* upon the property not already included in the estimated value in the inventory?

#### SEVENTH STEP.

**1607.** FINAL ADJUSTMENT: The making up and furnishing proofs of loss and accompanying vouchers is the duty of the insured, and not of the company, and should be at once proceeded with in accordance with the requirements of the policy without waiting for the arrival of an adjuster. Such proofs when made by an adjuster, are still the act of the insured, and he alone is responsible for their correctness in every particular. (1574.)

When there are no suspicious circumstances attendant upon the loss, and where no effort to overreach the company by unwarranted exactions is apparent, the agent *may* render all requisite assistance in the settlement of the claim; but when there may be reason to suspect dishonesty, or where the circumstances attending the loss are not perfectly clear and satisfactory, the *blank proof forms must be withheld*. No assistance should be given to the claimant to the prejudice of the company's legal rights until further developments shall indicate the proper course to be pursued. The loss proof blanks are solely for the benefit of the company; they are under no obligation to furnish the insured with them. (1614.)

Throughout the proofs of an honest loss, where all the need-

ful data are ready at hand, there will always be a general and concurrent harmony pervading the whole, which is not present in fraudulent papers, where the data have been manufactured for the occasion.

In the latter case, "as villainy is seldom rid of all earmarks," the most skillfully concocted proofs will present to the experienced adjuster some jarring discrepancy; or some link will be missing, casting doubt and suspicion over the whole.

This difficulty in getting up false papers, so as to deceive the practiced eye of the underwriter, has often proved the salvation of the companies. The good points of an honest loss will always be apparent; it is the objectionable ones which secrete themselves and require unearthing.

**1608.** When *preliminary proofs* and the accompanying *vouchers* have been prepared and submitted by the claimant, they should be carefully examined in detail, and closely compared with the results obtained by investigations already made, as it seldom occurs, where parties are left to make their own proofs, relieved from the eye of a watchful adjuster or agent, that overcharges, more or less glaring or exorbitant, are not sometimes made, either from ignorance or wilful intent. Parties have been known to advance the plea, when detected in thus overcharging, "That, as the company would insist upon some abatement *anyhow*, the intention was to make the amount large enough to admit of the *customary* (?) reduction, and still obtain full indemnity." This was done in one instance by the advice of "friends."

It should be constantly borne in mind that *underwriters* are *cash customers*, and as such are entitled to the best price, and the *customary discount to cash buyers, in all cases*.

**1609.** In making up the proofs, the difference between the values of goods purchased for cash and those bought on time should be considered, as well as the further fact that all merchants are not equally close buyers; some paying higher prices for the same kinds of stock, on the same terms of payment, and not unfrequently at the same places. The amount to be paid by

the company is the actual value at which such company could replace the goods for *cash* at the time of the fire. (1693.)

Any *depreciation*, for any cause, should be placed to the credit of the company, as required by the conditions of the policy. (1716.)

**1610.** *If the loss be but partial*, it may be necessary to take account of the damaged stock only, leaving the sound portion out of the question entirely. (2178.)

**1611.** Should any of the property not belong to the insured, and yet be covered by the policy under the *usual commission clause* (1208), or otherwise, it must be specifically set forth in the proofs, with names of *bona fide* owners, values, etc.

**1612.** *If the loss be by removal only*, the damage should be carefully ascertained, and paid for in the proportion that the insurance bears to the amount of property at risk. Statement of loss by *removal only* should be separately made. (1680.)

**1613.** The adjuster should avoid technicalities or minor issues—and should leave no unsettled claim to drag its weary length through the courts, except where exorbitant claims, fraud and criminality are clearly apparent.

**1614.** When satisfied fully as to the honesty of the loss and the fairness of the claim, the adjuster, by his knowledge of forms and familiarity with the routine of such business, can frequently save time for himself, and procure more satisfactory papers for his company, by assisting the claimant in making up the proofs. *But if there be any suspicious or unsatisfactory circumstances attending the case*, the utmost care and circumspection should be observed in admitting any claim, or binding the company by any acts or admissions, without proper authority. The claimant should be left to make up his own papers in accordance with the conditions of the policy, without the customary courtesies extended by companies to unquestionably honest claimants. Any other course in doubtful cases would seriously militate against the interest of the underwriters. (1607.)

**1615.** When the claim has been thoroughly scrutinized, and the identity of and ownership in the property are fully established, the several vouchers satisfactorily executed, the stock duly arranged and invoiced, and the amount of damage ascertained by the appraisers, the claimant is ready to make up his "STATEMENT" as nearly as may be in one of the usual forms, and the results therefrom should be transferred to the "*preliminary proofs*," and the statement should accompany such proofs as "*Schedule B*." (1606.)

#### EIGHTH STEP.

##### CONTRIBUTIVE LIABILITY.

**1616.** Having ascertained or agreed upon the amount of loss sustained by the claimant *upon each item under the protection of all or any of the policies*, and the aggregate insurance thereon, if there be more than one policy interested, the next step will be to give the proper construction to the several policies, to ascertain the *pro rata contributive liability* (insurance) of each, and just how far the insurances may be concurrent upon the general loss. (1654.)

**1617.** When the aggregate liability upon all of the co-contributing policies is not more than sufficient to pay the loss, there can be no question of contribution; each company pays its own liability according to the contract.

**1618.** But, when the loss is less than the aggregate contributive insurance, there arise questions of apportionment among the co-insurers more or less complex, as the several policies may be more or less concurrent or involved, and the ability and proficiency of the adjuster will be taxed accordingly.

**1619.** Each policy, specific or compound, is *liable to its full amount on any one, or pro rata on all of the items under its protection, and must contribute with each co-insuring policy in its concurrent insurance upon such items.* (1622.) If any policy cannot pay the loss, or its pro rata share of it, on all of its items, *it must pay its ratable share equally on each as far as it can*, with each respective co-insurer. No policy is

entitled to contribution from any one co-insurer at the expense of the others. All must share equally, in proportion with their several concurrent liabilities—not insurances in all cases. (1624.)

**1620.** The most ready method of arriving at the proper apportionment of loss among co-insurers is to first find the maximum insurance liability upon each separate item—as if the loss was upon that item only—by classifying the several subjects in columns under their respective headings. The *contributive liability* of each co-insurer will be its ratable proportion of such insurance.

**1621.** The following illustration will make the rule perfectly plain:—

## EXAMPLE.

Company A covers books, stationery, fancy goods, and other articles usually kept in such stock.....	\$10,000
Company B covers books, stationery, paper and pictures.....	5,000
and Fixtures.....	500
Company C covers books and stationery.....	5,000
Company D covers school-books.....	5,000
Loss:—	
School-books,	\$8,000
Stationery,	3,500
Pictures,	500
Other books,	\$2,000
Fancy goods,	2,000
Fixtures,	500

**1622.** To classify these items for apportionment, commence by ruling as many columns as there may be subjects of insurance in all of the policies. Then, commencing with the policy of the "widest range,"—Company A in this example—enter opposite its name its full amount—\$10,000, in each column of items covered as if it were so many specific insurances upon each subject; and so on with B, C, and D, remembering that in this case, in the construction of the policy, the term *books* includes *school-books*, but *school-books* do not include *books*; and that "*other articles*" of policy A will cover *paper* and *pictures* of policy B. This will give the following classification of the *maximum liability* (*i. e.*, insurance) of each policy upon each item under its protection, to be subsequently modified and

controlled by their *relative concurrency and respective individual liabilities*, as will be fully explained under the head *Apportionment of Compound Policies*. CLASSES I. and II.

TABLE OF MAXIMUM INSURANCE.

Co's.	School-Books.	Other Books	Stationery.	Pictures.	Fancy Goods.	Fixtures.
A.....	10,000	10,000	10,000	10,000	10,000	
B.....	5,000	5,000	5,000	5,000		500
C.....	5,000	5,000	5,000			
D.....	5,000					
Totals..	25,000	20,000	20,000	15,000	10,000	500
Losses...	8,000	2,000	3,500	500	2,000	750

**1623.** From this tabulation is found the aggregated insurance upon each single item to be as follows:—

On School-books.....	insurance \$25,000, to pay loss, \$8,000
“ Other books.....	“ 20,000, “ “ 2,000
“ Stationery.....	“ 20,000, “ “ 3,500
“ Fancy goods.....	“ 10,000, “ “ 2,000
“ Paper and pictures...	“ 15,000, “ “ 500
“ Fixtures.....	“ 500, “ “ 750

**1624.** But it is further apparent that the relative concurrency of the several policies is *partial* only—that is, some of them have *specific* liabilities, which must be first discharged, before they can be held liable to contribute in any balance with co-insurers upon concurrent subjects, as is set forth in *Statement XXI.* (Compound policies, CLASS II.), where this example is fully worked out. (**2085. 2230.**)

**1625.** To test the correctness of this mode as a basis of apportionment, it will only be necessary to suppose that the loss had occurred to any one of the items, thus : had loss happened to *fancy goods* alone, no underwriter would deny the liability of policy A alone, and to its fullest extent, had the loss so required. Indeed, companies B, C, and D would be among the most strenuous supporters of this apportionment. The \$2,000 loss would first be deducted from the policy, leaving

the remainder to be apportioned ratably with other losses. So with *school-books*, had the claim been for loss on this item alone, the liability of each co-insuring policy would be as here stated. But the loss being upon *all* of the subjects, and some of them being *specific* (2091), the concurrency is not general or uniform until after the *specific items* have been paid for, when any remaining balances after such payment become subject to concurrent contribution. (2063.) In compound policies of CLASS I—where the concurrency of the insurance is *general*—the *maximum* liability of the several policies upon each item is found in the same manner; but the *specific* liabilities are determined by a different process, as explained in *section* 2082.

1626. The correct apportionment of contributive liability under non-concurrent policies is a branch of adjusting but little understood by inexperienced adjusters, each of whom usually has some favorite method of his own, which he applies to all cases where the interest of his company will be served thereby; the result is much trouble and many law-suits that might otherwise be avoided. *Sharp* adjusters usually hurry to a loss, make a hasty adjustment, and pay the claim *as they adjust it*, before other adjusters arrive, not unfrequently claiming contribution from others wrongfully, thus diminishing their own responsibility at the expense of co-insurers or the claimant, and thus causing difficulty with the insured in making the needful corrections. (2028.)

#### NINTH STEP.

1627. REPORTING TO THE COMPANY: When the adjusted loss is ready for payment, the company should be fully posted as to the facts and amount to be paid, before a draft is forwarded. Payment should be made in strict conformity with instructions, if any. Proofs should be forwarded with the canceled policy, if a total loss, or where it may be advisable to take up the policy. And the receipt of the claimant for the *gross* sum of the claim should be written upon the policy, and in duplicate.

**1628.** **CONTESTING THE CLAIM:** Should it be deemed advisable to contest the claim for any cause, the adjuster should make a full statement of the facts and reasons for contesting, with memoranda as to such especial points in favor of the company as can be relied upon for defense, with names of parties from whom information can be had as witnesses, with such other matters as may seem pertinent, without exaggeration or undue coloring, for the guidance of the company's counsel in the conduct of the case. No false legal position should be assumed, and no ground hastily taken upon which a good defense, supported by the best of evidence, cannot be maintained.

**COMPROMISE.** It is frequently apparent to the adjuster that while a claim is honest and ought not to be paid, yet the evidence obtainable would not be sufficient to offer to a jury with any hope of a favorable verdict. In such cases the only recourse left to the company is in "masterly inactivity" until the last, during which time "something may turn up" to the interest of the underwriter. Suspicious circumstances may, in the meantime, develop into facts; but if they do not after a reasonable time, and no additional light is shed upon the matter, a *compromise* would be allowable—but only when all chances of contesting the suit with favorable results have been lost.

It is in such cases that information gathered by the agent during the investigation of the loss can be made available if they have been duly preserved.

## NOTICE OF LOSS

BY THE INSURED.

**1629.** *Condition of the policy.*—"Persons sustaining loss or damage by fire shall *forthwith* give notice of said loss to the company, and, as soon thereafter as possible, render a particular account of such loss, signed and sworn to by them."

The conditions of all fire policies require that *notice of loss or damage* shall be communicated to the office of the company, either *immediately* or *forthwith*, or within some specified number of days after the occurrence of the fire. (**1649.**) It is uniformly held by the courts that notice, as required by the

policy, is a condition precedent to recovery in any case, unless waived by the insurer. (1646.)

McFaul v. Montreal Ind. Ins. Co., 2 U. C. Q. B. 59; Wightman v. Ins. Co., Rob. La. 442; 2 Bennett's F. I. Cases 330; Trout v. F. I. Co., 29 Penn. St. 198; Inland & Deposit Ins. Co. v. Stauffer, 53 Penn. St. 397; Davis v. Davis, 49 Me. 282; Eastern R. R. Co. v. Ins. Co., 98 Mass. 420; O'Reilly v. Life Ins. Co., C. A. N. Y., 1875, 2 Ins. Law Jour. 843; Mann v. West. Assur. Co., 17 U. C. Q. B. 190; Edwards v. Ins. Co., 25 Smith Pa. 378; 16 *id.* 9; Sparrow v. Ins. Co., S. C. Pa. 1884.

**1630.** The burden of proof, as to the sufficiency of notice given of a loss, is upon the insured.

HELD:—"Proof of due notice was a condition precedent, without which no recovery could be had. Omission to give notice was not a matter to be compensated in damages, but a bar *absolutely* to all claims. Notice to a director was *not* notice to the company or to an authorized agent."

**1631.** In the absence of any specific stipulation in the policy as to how notice shall be given, notice to the agent who effected the insurance, if he still remain the agent of the company, will be sufficient. But if the condition require that notice shall be given *in writing to the company*, the secretary, or one of its directors, notice by *parol* to an agent would not be sufficient.

Stimpson v. Ins. Co., 47 Me. 379; Lycoming Ins. Co. v. Updegraff, 40 Penn. St. 311; Ins. Co. v. Helfenstein, 40 Penn. St. 289; Hale v. Ins. Co., 6 Gray Mass. 169; 4 *id.* 337; 2 *id.* 397; Forbes v. Ins. Co., 9 Cush. Mass. 470; Herron v. Ins. Co., S. C. Ill., 4 Benn. F. I. C. 601; 28 Ill. 235; Riggs v. Ins. Co., 20 N. H. 198.

**1632.** The true doctrine seems to be, that where the stipulations of the policy are *specific* and *definite* in their requirements as to time and manner, substantial compliance with its calls is a condition precedent to a recovery, and compliance must be proved, or an *actual* waiver of such compliance must be affirmatively proved to the satisfaction of the jury; but much less stringency of proof will be required to establish a waiver of *defect in form or statement* in a notice seasonably given; or to enable a jury properly to find a *notice* to have been in *time* where the call is "forthwith" instead of being limited to a fixed number of days.

**1633.** "A defect *in time* of giving notice, being peculiarly within the knowledge of the insured, stands, as to waiver, quite differently from a defect in *form* or *in its matter*, of which the insured may be presumed to be ignorant; so, while the silence of the insurers as to the latter defects should be deemed a waiver, a different rule should be applied to the former."

Patrick v. Ins. Co., 43 N. H. 621; Trask v. Ins. Co., 29 Pa. St. 198.

**1634.** This notice is usually required to be in writing; but, if the knowledge of such a loss be fully communicated to the insurer *by the claimant*, the courts will not be very particular as to the *form* in which it is done. (Rix v. Ins. Co., S. C. N. H., 3 Benn. F. I. Cases 67.)

**1635.** Information of a loss through a third party, not interested, or from rumor, or from knowledge of the insurers themselves, or their agents, not derived from the insured, is not such notice as is required by the policy. (Ayres v. Ins. Co., 17 Iowa 177.)

Brinke v. Hanover F. I. Co., O. A. N. Y., 1887, 6 Ins. Law Jour. 707.

**1636.** Notice to a duly authorized agent of a company, by the insured or his agent, is held to be notice to the company. (**1631.**)

Killips v. Ins. Co., 28 Wis. 472; Muredin v. Ins. Co., L. R., 1 C. P. 232.

**1637.** Notice by an assignee to whom a policy has been assigned, with consent of the insurer, is due notice. (Cornell v. Leroy, 9 Wend. N. Y. 163.)

**1638.** Notice by mail, if within the requirements of the conditions of the policy as to time and properly addressed, is full compliance therewith.

Schenck v. Ins. Co., 4 Zab. N. J. 447; 3 Benn. F. I. Cases 712; Curry v. Ins. Co., 10 Pick. Mass. 535; Inman v. Ins. Co., 12 Wend. N. Y. 161; 1 Greenl. Ev., § 40; Taylor Ev. § 147.

Where the insured had gone to Europe, and notice of premium falling due was forwarded to her there, but failed to come to hand in time to act. Held: "The failure to receive the notice was the misfortune of the insured, and she could not recover." (Greely v. Iowa State Ins. Co., 8 Ins. Law Jour. 817.)

**1639.** Where the conditions of a policy required notice *forthwith*, it was held that notice sent *eleven days* after the fire was too late, no sufficient reason being shown for the delay.

**1640.** In another case it was held that a written notice of loss, served upon the company *eight days* after the occurrence of the fire, the officers of the company having had knowledge of such fire *five days* before receiving such written notice, was full compliance with the conditions of the policy relative to notice of loss.

N. Y. Cent. Ins. Co. v. Nat. Prot. Ins. Co., 20 Barb. N. Y. 468; Whitehurst v. N. C. Mut. Ins. Co., 7 Jones Law N. C. 433; 13 Wend. N. Y. 452; 16 *id.* 395; May v. Buckeye Ins. Co., 25 Wis. 291; Troy F. I. Co. v. Carpenter, 4 Wis. 120.

**1641.** A *verbal* notice of loss is held to be sufficient, when no other form is stipulated for or demanded. (Killips v. Ins. Co., 28 Wis. 472.)

**1642.** The State of Indiana has the following law on this subject :

"No insurance company shall insert any condition, in any policy hereafter issued, requiring the insured to give notice forthwith, or within the period of time less than five days of the loss of the insured property."

**1643.** *Oral* notice to the agent *two days* after the loss, and written notice to the secretary more than a month afterwards, was not a substantial compliance with the condition requiring written notice *to the secretary within twenty days* after a loss occurs. Neglect of insurers to object to such notice at the time was not a waiver. (Cornell v. Ins. Co., 18 Wis. 387.)

**1644.** HELD, in North Carolina: Notice *twenty days* after the loss, though accompanied by the preliminary proofs, was not in due season. (Whitehurst v. Ins. Co., 7 Jones Law N. C. 433.)

A delay of *thirty-eight days* in giving notice without setting forth any excuse. Held: Not to be a literal or substantial compliance with the stipulation of the policy requiring notice *forthwith*. (Inman v. Ins. Co., 12 Wend. N. Y. 452.)

Chamberlain v. Ins. Co., 55 N. H. 249, 4 Ins. Law Jour. 649.

**1615.** Where there had been a delay of *thirty* to *forty* days in giving notice of loss, under two distinct policies, and a correspondence ensued as to the preliminary proofs, and the company refused to pay loss under one of the policies :—

Held: "Under the circumstances of the case, the company was precluded from setting up the delay in giving notice as required, as a defense." *Lampkin v. Ontario Mut. F. I. Co.*, 12 U. C. Q. B. 578.

#### WAIVER OF NOTICE.

**1616.** The insurer may *waive* such notice, either directly or by implication, in consequence of some inconsiderate act by himself, or by his agent as above. But if the insurer has been once discharged from liability by want of timely notice, responsibility will not re-attach without proof of authority in the agent to *waive* such notice, or a new consideration to sustain it.

*Clark v. N. Eng. Ins. Co.*, 6 Cush. Mass. 342; *Lycoming Ins. Co. v. Schreffler*, 42 Penn. St. 188; *Drake v. Ins. Co.*, 3 Grant's Cases 325.

The receiving of notice by the insurer, to which no objection is made at the time, is no *waiver* of any *delay* that may have occurred in giving such notice. But the insurer must notify the insured of any defect in *form* or *statement* in a *seasonable* notice, or such defect will be deemed to have been waived.

*Clark v. N. E. F. I. Co.*, 6 Cush. Mass. 342; *Bartlett v. Ins. Co.*, 46 Me. 500.

**1617.** Where a policy required "*immediate notice*," and notice was received without objection as to time, and instructions were given to the insured as to the form of the statement of his loss; and an agent of the company subsequently made examinations respecting the loss :—

Held: To be no *waiver* of due and timely notice. (1643.)

*St. Louis Ins. Co. v. Kyle*, 11 Mo. 278, 2 Benn. F. I. Cases 641; *Knickerbocker Ins. Co. v. Gould*, S. C. Ill., 5 Ins. Law Jour. 789.

**1618.** An absolute refusal to settle the claim in any way, where a defective notice had been given, has been held a sufficient waiver of want of other notice. But it is not a waiver of want of *seasonable* notice.

*Trask v. Ins. Co.*, 29 Penn. St. 198; *Lampkin v. Ontario M. F. I. Co.*, 12 U. C. Q. B. 578; *Clark v. N. Eng. Mut. Ins. Co.*, 6 Cush. Mass. 342.

## FORTHWITH—IMMEDIATELY.

**1649.** "*Forthwith*," as applied to the notice required, has been, strictly construed, in some decisions, to mean, "immediately," "directly," "without delay;" and more leniently in others, as meaning with "due diligence," "within a reasonable time, under the circumstances of the case;" the whole, however, being questions for the jury as to the *facts*; but when the *facts* are not in dispute, the *court* will determine, as a question of *law*, what is "reasonable diligence," in giving notice. (**1614.**)

Peoria F. & M. Ins. Co. v. Lewis, 18 Ill. 553; St. Louis Ins. Co. v. Kyle, 11 Mo. 278, 2 Benn. F. I. Cases 641; Phillips v. Ins. Co., 14 Mo. 220; Trask v. Ins. Co., 29 Penn. Sta. 198; 33 *id.* 397.

The meaning of "*forthwith*" must be construed by the light of all the circumstances which surround *each case*; as the frequency of the mails; nature of the stock to be accounted for; employment of the insured in attempting to check the fire, and in saving the property.

Chamberlain v. Ins. Co., 56 N. H. 249, 4 Ins. Law Jour. 649; Watson v. Delaheld, 2 Caines. N. Y. 234; s. c. 1 Johns. 150; McLanahan v. Ins. Co., 1 Barb. 170; Green v. Ins. Co., 10 Pick. Mass. 402; Barnes v. Alexander, 1 Brevard, S. C. 213. By telegraph:—Snow *et al.* v. Ins. Co., N. Y. C. A., 4 Ins. Law Jour. 435; May Ins. 567; Continental Ins. Co. v. Lippold, 3 Neb. 391, 4 Ins. Law Jour. 430.

The necessary absence of the insured while removing his family, on account of a prevailing pestilence at his place of residence, has been held to justify delay in rendering preliminary proofs.

## INDEMNITY.

**1650.** "*Condition of the policy.*—And the said.....Insurance company hereby agrees to make good unto the said assured....., executors, administrators and assigns, all such immediate loss or damage, not exceeding in amount the sum or sums insured, as above specified, nor the interest of the insured in the property, except as herein provided, as shall happen by fire to the property so specified, from the..... day of..... one thousand eight hundred and ....., at twelve o'clock at noon, to the ..... day of ....., one thousand eight hundred and ....., at twelve o'clock at noon, the amount of loss or damage to be estimated according to the actual cash value of the property at the time of the loss."

**1651.** The insurance contract is held by the courts to be a *bond of indemnity* within an agreed amount, for a specified period of time, under certain contingencies, *against loss or damage by fire*, upon certain specified subjects; which proposed *indemnity* shall simply pay for as much of the property as may be *lost or damaged*, by the peril insured against, within the terms of the contract, at its *actual cash value at the time of the loss*.

1 *Arnould Ins.* 8, § 8, 300, § 123; *Stevens & Bencke*, 228, 295; *Hopkins Mar. Ins.* 59; 2 *Black. Comm.* 458; *Livingstone v. West. Assur. Co.*, 14 *Grant Ch.* 463; *Peddie v. Quebec Ins. Co.*, *Stuart's L. C. App.* 117; *Ketchum v. Protect. Ins. Co.*, 1 *Allen N. B.* 136.

An *indemnity* is a security against *future* loss or damage, whilst a *debt* is a sum of money due and owing. Any payment under an indemnity is *contingent*, both as to time and circumstances; upon a debt it is certain and immediate.

**1652.** The words used to express this liability may be *insure, indemnify, make good, satisfy, pay*, or any other term which signifies that money is to be paid in case of loss. The predominant intention of the contract is such *indemnity*, and this intention must be kept in view in putting a construction upon the policy. (*Angell Ins.* 50, § 12; 1 *Philips Ins.* 25, § 30.)

**1653.** The policies in use in New York city, from A. D. 1800 to 1814, contained the following—"pay and satisfy all loss and damage," without further qualification. In 1814 the following qualification was added:—

"Shall not be liable to pay more than the real amount of such loss or damage, to be estimated according to the true and actual value of the said property insured at the time of such loss or damage."

**1654.** The fundamental general principles of insurance, as distinguished from gambling and wagering (**287**), is that it is a contract *solely of indemnity*, and not of gain to one party at the expense of the other. Its object is not to make possible gain but to avoid a possible loss. A man can never be said to be indemnified against a loss which can never happen to

him. There cannot be an indemnity without a loss; nor a loss without an interest. (*Pritchell v. Ins. Co. N. Am.*, 3 Yates Pa. 464.)

EMERIGON in this connection says :—

"It is sufficient that the insured be indemnified for the real damage sustained by him, without having a right to pretend to advantage at the expense of the insurers. Regard is had to loss only, not to gain."

Judge DUER says of the insurance contract :—

"As a contract of indemnity it must be liberally construed for the insured, to give him the largest indemnity within its terms; and these terms may sometimes be constrained and forced to preserve its validity, but never to render the insurance void. If the meaning is clear and consistent, any attempt to substitute a different one by subtle reasoning is not to interpret the contract but to elude its performance." 1 Duer Ins. 159, 165.

May Ins. 2; *Peddle v. Quebec Ins. Co.*, Stuart's L. C. R. 174; 3 Kent. Comm. 282.

**1654a.** This principle of indemnity requires that the insured shall not be paid the full value of his insurable interest as agreed upon by the parties, and at the same time be permitted to retain such interest, or any portion of it. "The contract should never be so arranged, that under any set of circumstances it would be profitable to the insured to meet with disaster; he should never make money by a loss." It is upon this principle that subrogation rests. (1821.)

1 Philips Ins. 2, § 3; *Irving v. Manning*, 6 C. B. 422; 1 Arnould Ins. 8, 5; May Ins. 2; *Alauzet* 72; *Stracca de Assicuracionibus* 960, 20, No. 4.

**1654b.** The contract of insurance being thus one of indemnity only, such indemnity must, on the other hand, be adjusted upon the principle of replacing the insured, as nearly as may be, in the situation in which he was at the commencement of the fire; so that if the loss or damage be less than the amount of the insurance, he will be entitled to recover all of such sum lost or damaged; and if there be a total destruction of the property, up to the amount of the insurance, he will be entitled to recover the full amount of such insurance. (1739.)

*Marchesseau v. Ins. Co.*, 1 Rob. La. 438, 2 Benn. F. I. Cases 166; *Franklin F. I. Co. v. Hamell*, 6 Gill. Md., *id.* 568.

The doctrine of mitigated damages has no application to indemnity.

## LIABILITY.

**1655.** "The foundation of claims on underwriters is *accident*—those events which no human prudence could foresee."

"Insurers are responsible only for such damages as happen through casual or unavoidable accident; or from voluntary acts which have a just and reasonable cause, such as to avoid greater and more imminent danger; and in general, for all *accidents*, however extraordinary, if there be no restrictions by an express clause. But an *accident* is not that which happens through the defects or perishable nature of the thing assured (**709**, **1667**, or through the act or fault of the proprietor, freighter, or master." (2 Valin Comm. 78.)

**1655a.** The *liabilities* which the insurers are content to assume are set forth in the policy, as modified and controlled by the exceptions and conditions of the contract. Such *liability as to amount* is simply the sum which the policy is legally liable to pay *under its own peculiar conditions*.

Hercules Ins. Co. v. Hunter, 14 U. C. S. 1137; Equity F. I. Co. v. Union Ins. Co., 11 L. C. 190; Douglas v. Kennedy, 16 U. C. Q. B. 113; 1 Arnould Ins. 11, § 13; Hopkins Mar. Ins. 8, 55; Ill. Mut. F. I. Co. v. Andes Ins. Co., 63 Ill., 8 Ins. Law Jour. 820.

The insured pays no loss except with reference to the sum upon which he is paid a premium; the whole sum if the loss be total as to the insurance; some aliquot portion of the sum if but partial.

1 Arnould Ins. 7, § 7; Emerigon Ins., Meredith's Ed., 285, 288, 290; Weale Ins. 6, 159; Bailey & Pond v. Loebben & Lancashire Ins. Co., U. S. C. C. La., 4 Ins. Law Jour. 503.

**1656.** The amount set forth in the policy is the *maximum of liability in any contingency*, and not the actual amount of indemnity to be paid in all cases. An insurance policy has, however, no "face value." A policy for \$1,000 is neither a bond nor a mortgage for \$1,000; it is a contingent note, the value of which is, according to circumstances, *any* sum within that amount; the \$1,000 named is not *a* sum to be paid, but the limit of a possible sum. The undertaking is to pay the amount of the *actual* loss or damage, within the amount of the insurance. (**1666**.)

An *implied* liability cannot be upheld where an *express* one would be *illegal*. (*Willey v. Farmers' Ins. Co.*, 8. C. Mich., 13 Ins. Law Jour. 306.)

The requirements of the policy in the matter of *preliminary proofs* (1897) show conclusively that the contract is not a *valued* one, but open to proofs as to the *sum* of the loss or damage. Hence, we find that the *minimum of loss*, with in the policy, is the *maximum of liability* to the underwriter.

### LOSS AND DAMAGE.

**1657.** Loss, as technically distinguished from damage, is when all or any portion of the property at risk is entirely consumed, destroyed or missing after a fire.

**1658.** DAMAGE is when none of the property is totally consumed or destroyed, or missing, but remains after the fire in a more or less damaged condition.

Unless there be some good reason to the contrary, the words "*loss and damage by fire*" must be construed according to ordinary rules, that is, the damage must be either from the ignition of the articles consumed, or by the burning of the whole or a part of the premises. In the one case there would be "*loss*," in the other "*damage*." (1691.)

*Losses*, including *damage*, may be *total* or *partial*, as respects the insurance. They are considered total when equal to or beyond the insurance; they are *partial* when anything less than the amount of insurance.

*Williams v. Hartford Ins. Co.*, 54 Cal. 442, 9 Ins. Law Jour. 447; *Anstin v. Drew*, 4 Camp. 361; *Babcock v. Ins. Co.*, 6 Barb. N. Y. 627; *White v. Ins. Co.*, 57 Me. 91; *Great Western Ins. Co. v. Fogarty*, U. S. S. C., 3 Ins. Law Jour. 714; *Nave v. Home Mut. Ins. Co.*, 37 Mo. 430; *Harrison v. Queen Ins. Co.*, 49 Wis. 71.

**1659.** *Loss* is a condition precedent to a claim for indemnity, and *loss* can accrue to the insured only so far as he has an interest. The underwriter is not liable to pay any loss, except such as the insured has sustained by the peril insured against (1654); and whether this loss be total or partial, the amount must determine its *value* (1673) either by agreement before insurance, as in a valued policy (282), or by proofs

after loss (1862). Some *value* must be proved, for, if no goods are at risk, the policy never attaches. The underwriter *is liable* when the perils insured against are *proximate* and effect the loss; but not, as a general principle, when the cause is remote; nor when simply consequential. (726. (1735.)

**1660.** Upon this subject Lord BACON says:—

“It were infinite for the court to consider the *causes of causes*, and their impulsions one of another; therefore, it contenteth itself with the *immediate cause*, and judgeth of acts by that, without looking to any further degree.” (1735.) (Bacon, Max. Reg. 1.)

Broom, Leg. Max. 105; Germania Ins. Co. v. Sherlock, S. C. Ohio, 4 Ins. Law Jour. 531, and citations of authorities there made; Aetna Ins. Co. v. Boen, U. S. C. C. Conn., 6 Ins. Law Jour. 933; 2 Arnould Ins. 764; 1 Parsons Ins. 556; Waters v. Ins. Co., 11 Peters U. S. 213, 1 Benn F. I. Cases 619.

A house covered by insurance, injured by the falling of a gable of another house, caused by fire:—

**HELD:** That the insurers were liable, though the injured house had not been on fire; and the falling gable had remained standing two days subsequent to the extinguishment of the fire, and then fell in consequence of operations for its removal. (Johnson v. West of Scotland Ins. Co., 7 Cases Ct. Sess. (Scotch) 52, cited May Ins. 496, § 412, and 1 Benn. F. I. Cases 289.)

**1661.** Where a steamboat, insured against loss by fire, received injury by collision with another vessel, and filled with water, whereby the *fire* was forced from the boiler furnace and burned off her light upper works, liberating “the light freight, and thereby reducing the floating capacity of the vessel so that it sunk in deep water. The jury found that it would *not* have sunk *but for the fire*. Upon appeal, the United States Supreme Court, among other points, **Held:**—

“An insurance upon a steamer against fire, except ‘fire happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power,’ is an insurance against fire caused by collisions.”

“Underwriters against fire are responsible for a loss occasioned by the sinking of a vessel insured, when caused by fire, though the fire itself be the result of a collision not insured against—if the effect of the collision, without the fire, would have been only to cause the vessel to settle to her upper deck, in which case she would have been saved.”

Howard Ins. Co. v. Norwich & N. Y. Transp. Co., 12 Wall. U. S. 194, 1 Ins. Law Jour. 415; same case 31 Conn. 561; Germania Ins. Co. v. Sherlock, 25 O., 4 Ins. Law Jour. 581; May Ins. 514, § 457.

**1662.** *Losses* arising from *bona fide* efforts to extinguish fires, such as wetting and soiling goods, or by *theft* at the fire, or in *removal*, are fairly within the contract of insurance, and the underwriter will be liable, unless the policy stipulates against such loss. The doctrine in these cases seems to be that *damage* by water being thrown upon goods in extinguishing a fire, and loss by plunder of goods removed away from the fire, and so put out of the control of the owner, are, in common practice, treated as directly incidental or consequential to the fire, and covered by the policy, unless otherwise stated. (1735.)

Waters v. Ins. Co., 11 Peters U. S. 213; 1 Benn. F. I. Cases 614, and authorities cited; 2 Arnould Ins. 764; 1 Parsons Ins. 562.

## BY FIRE.

**1663.** When the peril insured against is fire, the instrument of destruction must be fire (3 Barr. Penn. 47). Hence to make underwriters liable under a *fire* policy, the *loss* or *damage* must be caused by *fire*—either by actual ignition of the property itself, or of some substance near by, causing damage by heat, by smoke, or from water used in preventing or extinguishing the flames. *Fire* by *actual ignition* must be the *proximate* or *efficient* cause of the loss or damage, and not merely incidental to it. (1667.)

Hillyer v. Ins. Co., 3 Barr. Pa. 475; 6 Bacon Abridgt. 658; 1 Parsons Ins. 559.

**1664.** *Heat* is not fire. No liability attaches to the underwriter for *damage* by heat or smoke occasioned by the misapplication of fire-heat during the process of manufacture:

HELD: "That damage to a stock of a sugar refinery, by the heat of the usual fires, in consequence of the mismanagement of the dampers by those having charge of the refinery, was not *damage* within the policy against fire." (Austin v. Drew, 4 Camp. N. P. 360; 6 Taunt. 486.)

4 La. Ann. 15; 19 id. 279; 14 N. H. 341; 11 Ohio 146; 18 Johns. N. Y. 451; 6 Barb. N. Y. 637; May Ins. 481; Wood Ins. 193; 37 Me. 256; 4 Comst. N. Y. 130; Civil Code L. C., § 2581.

**1665.** If a part of a building adjacent to a fire-place, timberwork around the fire-place, and the like, be damaged or destroyed by fire from the grate or hearth, such would be a *loss by fire*. But the grate itself, furnaces, or other ordinary apparatus, or apparatus containing or applied to the fire for conducting manufacturing process, if destroyed or damaged by the fire they contain or to which they are applied, give no claim for indemnity.

The spoiling or consuming of any two chemical fluids or bodies by the process of combustion ensuing on their combination is not a *loss by fire* as to either of the substances; but, as to any third body, it is such loss.

HELD: That the policy covered a fire occasioned by putting upon a stove about *five* gallons of an inflammable ointment, for the purpose of warming it it being usual for druggists to mix and melt ointments in that manner.

Meat under process of curing by slow action of smoke, if destroyed by flames or the fire, has been held to be a loss by *fire*.

*Fire* produced by friction of a wheel on its own axle, which consumes the wheel, is a loss of the wheel by *fire*.

Angell Ins. 163; May Ins. 709; 1 Parsons Ins. 555, 560; Holt N. P. 126; Beaumont Ins. 37.

**1666.** Should a building covered by insurance fall in consequence of an explosion of a steam-boiler, there would be no loss to the underwriter; for, although the *damage* was principally caused by the furnace *fire under the boiler*, yet the fire was not the *proximate cause* of the fall of the building. (1672.)

Angell Ins. 168; 7 Bosw. N. Y. 385; 1 Kern. N. Y. 516.

#### BY PROPER VICE.

**1667.** Underwriters undertake to make indemnity only for damage arising from *external* accidents, not from that occasioned by the inherent qualities or *natural defects* of the thing insured; hence, as a general principle, insurers are not liable for the loss of a thing which is consumed by reason of its own qualities, such as *spontaneous combustion* without external causes, but they are liable for the consequent loss of other subjects covered by the policy. (1711.)

It has been held, that if *hemp* put on board a vessel in a state liable to effervesce did effervesce and generate fire, the insured cannot recover for loss on the hemp, though a policy on the vessel would be liable.

Also: If a *hay-rick* take fire from heat or fermentation, it is not a loss, except as to adjoining bodies which may be ignited by it. But not if wet on being stacked.

If *lime*, accidentally submitted to the action of water, take fire, it is not a loss by fire, as to itself, but it is if in slaking it communicate fire to adjoining bodies. But, on the other hand, it has been held that an insurance against fire effected upon a quantity of coal covers also the risk from *spontaneous combustion* of such coal, caused by contact with water in the hold of the vessel; water being the exciting cause, and one of the perils insured against. So with *lime* put *on board* dry, and from leakage or other cause generates fire, it would be a loss from fire.

2 Valin 8, 164, 412; Park Ins. 111, 114; 2 Arnould Ins. 758; 1 Parsons Ins. 380, 558; Bunyon Ins. 41; Emerigon Ins., Meredith's Ed., 290, 350; Wesket Ins. 279, 390; 2 Campb. 138; Civil Code L. C., § 2509.

## BY LIGHTNING.

**1668.** *Condition of the policy.* —“Nor by lightning, unless fire ensue.”

“If the damage be by *lightning*, without combustion, it is clearly *not* within the terms of a policy against fire; for although, like a match, *lightning* may kindle a fire, yet it cannot be understood to be, of itself, fire.”

Kenniston v. Ins. Co., 14 N. H. 341; Andrews v. Ins. Co., 37 Me. 256; Babcock v. Ins. Co., 6 Barb. N. Y. 687, affirmed on appeal, 4 Comst. 326, 3 Benn. F. L. Cases 154; 1 Parsons Ins. 560.

Where the policy was against loss or damage by fire, and one of the conditions was that the insurers will be liable for *fire* by lightning, it was:—

**Held:** “The insurers were not liable for the destruction of a dwelling-house, covered by the policy, by its being *rent* and *torn in pieces* by *lightning*, without being *burnt*; and unless there be actual ignition, and the loss be the effect of such ignition, the insurers are not liable; there must be *fire*, or burning, which is the proximate cause of the loss.”

Angell Ins. 159; Babcock v. Ins. Co., 6 Barb. N. Y. 687, *supra*. In this case the whole subject of lightning, as connected with fire insurance, is discussed. Ont. Stat. Cond., § 11.

Where the buildings were destroyed by a tornado, no fire ensuing, suit was brought under the lightning clause against the companies. **HELD**: The loss was not covered by the policies. (Spinsley v. Lancashire Ins. Co., S. C. Wis., 11 Ins. Law Jour. 371; Baker v. Rockford Ins. Co., U. S. C. C., Minn. 1883.) Experts testified in these cases, the majority being in favor of the caloric theory, as the immediate causes of cyclones, tornados, etc. The following is the form of clause now in general use:—

#### LIGHTNING INDEMNITY CLAUSE.

**It is hereby specially agreed**, That this policy shall cover loss or damage by *lightning* (meaning thereby the commonly accepted use of the term lightning, and not in any case to include loss or damage by wind, tornados, cyclones, or electrical storms) to the property hereby insured not exceeding the sum insured nor the interest of the assured in the property, whether fire ensues or not, and **PROVIDED**, that if there is other insurance upon the property damaged, then this Company shall only be liable for such proportion of the loss or damage as the sum hereby insured bears to the whole amount of insurance thereon, whether such other insurance contains a similar provision or not.

**1668a.** Many offices are now issuing policies covering loss or injury from cyclones, tornados and wind-storms, the rates range about the same as on farm property generally. The risk is purely an insurance hazard, void of any moral risk attendant upon tangible property.

#### LIVE STOCK.

**1668b.** The covering of *live stock* against death or injury from lightning is now common, under the following or some similar clause:—

"It is understood that this insurance covers the above described (live stock), in case of death by lightning, whether in or out of said (barn), in the field or on the road."

Hawes v. Ins. Co., S. C. Pa., 18 Ins. Law Jour. 561; Same v. Ins. Co., 114 Penn. St. 431; Boright v. Ins. Co., S. C. Minn., 15 Ins. Law Jour. 396; De Graff v. Queen Ins. Co., 17 Ins. Law Jour. 464.

**1668c.** Large numbers of live stock are sent to foreign countries from the United States and Canada, under the following

## CATTLE CLAUSE.

"Warranted free from mortality and jettison from whatever cause arising, unless occasioned by the loss, burning, or stranding of the vessel."

See case of *Snowden v. Guion*, New York Commission of Appeals.

Live stock insurance in the United States was started in the city of Philadelphia, in the year 1832, since which time a number of offices have been organized, mostly mutuals; but in no single instance has success attended them; nearly, if not quite all having retired. One prominent cause of this want of success is in the absolute lack of any reliable statistics in the business; another is the heavy moral hazard connected with it. If a portion of a farmer's stock be covered by insurance, the mortality among the stock usually falls among that portion insured; the uninsured cattle worry along to a good old age without special care.

From Magens we learn that early in 1700, the insurance of cattle in the field against disaster was common, but nothing is said of insurance against lightning. A copy of the application of the policy issued, and the adjustment of loss under it, will be found on pp. 267-8, also p. 34, § 31, *Essays*, vol. 1

## BY EXPLOSIONS.

**1669.** *Condition of the policy.*—"Nor for any loss caused by the explosion of gunpowder, camphene, or any explosive substance; nor by lightning, nor explosions of any kind, unless fire ensue, and then for the loss or damage by fire only, which loss shall be determined by the value of the damaged property after the casualty by explosion or lightning."

This condition makes a very nice distinction as to the *value* of property at a given time—that is, after the casualty, and before it may take fire. By the conditions of some companies all liability ceases in case of an *explosion* from any cause. (**1671.**)

*United F. & M. Ins. Co. v. Foote*, 22 Ohio St. 340, 2 Ins. Law Jour. 190; *St. John v. Ins. Co.*, 1 Duer N. Y. 371; *Dows v. Ins. Co.*, 127 Mass. 346; *Emsley v. Ins. Co.*, 14 W. Va. 33; *Washburn v. Ins. Co.*, U. S. C. C., W. D. Pa., 9 Ins. Law

Jour. 68; Same v. Ins. Cos., U. S. C. C., Ohio, 9 *id.* 424, 761. By gas: Burton v. Gore Dist. M. F. I. Co., 12 Grant Ch. 170; Crawford v. Ins. Co., 8 U. C. Q. B. 135; Stat. Cond. Ont., § 11; Waters v. Ins. Co., 11 Peters U. S. 213; Scripture v. Ins. Co., 10 Mass. 356; Stanley v. Ins., 3 Exch. R. 71; May Ins. 496 *et seq.*

**1670.** A policy on cotton in a warehouse stipulated that the company would not be liable for loss by fire occasioned by *explosion*. An explosion of powder and fixed ammunition occurred in another warehouse; circumjacent buildings were thrown down, their contents opened to the flames, and a fire was lighted which spread and consumed the cotton covered by the policy.

Upon appeal to U. S. S. C. the decision of the lower court was reversed, and it was:—

HELD: "The rule of the decision of the court below has been proved to cover some fallacies; a close, practical definition of the rules of law in the premises is that, in case of the concurrence of different causes, to one of which it is necessary to attribute the loss, it is to be attributed to the efficient predominating peril, whether it is or is not in activity at the consummation of the disaster." (1660.) (Ins. Co. v. Tweed, 7 Wall. U. S. 44.)

Waters v. Ins. Co., 11 Peters U. S. 213; 94 U. S. 469; 95 *id.* 117.

**1671.** A stipulation in the policy "that the insured shall not be liable for an *explosion of gunpowder*, applies only to a fire *originating* from such an *explosion*, and not to an *explosion* intended to put out a fire by blowing up a house *after it was actually on fire*. (1677.)

Greenwald v. Fire Ins. Co., 5 Philad'a R. 323; Caballero v. Ins. Co., 13 La. Ann. 217; City Fire Ins. Co. v. Corlies, 21 Wend. N. Y.; Washburne v. Ins. Co. U. S. C. C. Wis.

It has been held that a loss by explosion of a *steam-boiler* does not come under the meaning of a fire policy, even where fire ensues, where "loss or damage by fire" only was insured against. (Millaudon v. Ins. Co., 4 La. Ann. 15.)

If an *explosion* occur in the course of a fire, the insurers are exempted from liability from any damage caused by such *explosion*, and from any damage done by *further fire resulting from such explosion*, where liability for such explosion is excluded from the policy.

Hayward v. Liv. & Lond. & Globe Ins. Co., 7 Bosw. N. Y. 385, affirmed, 3 Keyes 456; Briggs v. N. B. & Merc. Ins. Co., C. A. N. Y.; 2 Ins. Law Jour. 929.

## BY FALLING.

**1672.** *Condition of the policy.*—"If a building shall fall, except as result of a fire, all insurance by this company on it or its contents shall immediately cease and determine."

A building insured against fire having fallen, afterwards took fire :—

**Held:** That the building having fallen down, ceased to exist as such, by a cause, or by reason of a peril not insured against; *fire* must be the *efficient* cause, and the *direct* effect of the *fire*. (1669.)

*Nave v. Home Ins. Co.*, 37 Mo. 430; *Heck v. Globe Ins. Co.*, *Walker v. Queen Ins. Co.*, *Stowe v. Girard F. & M. Ins. Co.*, S. J. U. Mass., 8 Ins. Law Jour. 912.

The *cause* of the loss of the subject insured in this case was *not* the *fire*, but the *fall*. That a fire springs up afterwards in the rubbish and destroys the fallen materials is something beyond the contract. The *materials* were not insured, the building was.

Where one of the walls of a granite building gave way, and half of the store and the adjoining building fell; shortly after a fire broke out *in the ruins of the adjoining building*, which communicated with the remaining portion of the granite store. The policy being upon "stock in the granite store," it was :—

**Held:** "That the insurers were liable for damage from fire, and from water used to extinguish it, to goods not displaced or injured by the fall."

*Lewis v. Fire Ins. Co.*, 10 Gray Mass. 159; *Brennen v. Liv. & Lond. & Globe Ins. Co.*, 51 Cal. 161, 6 Ins. Law Jour. 475.

In this case the fire broke out and burned the goods before there could be any interposition for their safety.

**1673.** The burning of "*Patterson Warehouses*" in Philadelphia, in August, 1869, was caused by the *falling* of section H of the building from overloading with whisky in barrels, which, bursting in the fall, the liquor came in contact with the furnace fires under the pavement, causing a fearful explosion, destroying section H completely, and communicating flames to the adjoining sections, until the result was an unmanageable conflagration, wherein the loss paid by the underwriters on whisky alone was \$2,025,590.15 on an insurance of \$2,647,350.

At the time of adjustment of the loss, the origin of the fire had not been agreed upon, which, with other attending circumstances of doubt and uncertainty as to the result of a suit, a compromise was effected, being, as the adjusting committee expressed it, "*strictly a compromise on the uncertainty of the facts, and in no manner as implying an invalidation of the 'falling' clauses in the policies.*"

## INVASION, INSURRECTION, RIOT,

### CIVIL COMMOTION, MILITARY OR USURPED POWER.

**1674.** *Condition of the policy.*—"Nor for any loss or damage by fire caused by invasion, insurrection, riot, civil commotion, or military or usurped power."

This clause is first found in the policies of the *London Assurance* and the *Royal Exchange* offices, London, A. D. 1720. The restriction was limited to "invasions, foreign enemies, or any military or usurped power." Lord WILMOT attributes its origin to the fact, that the incorporation of the *London Assurance* and the *Royal Exchange* offices occurred soon after a rebellion in England; and adds: "It was not so romantic a thing to guard against fire by rebellion as it might be now." (396.)

Angell Ins. 180, § 134; Dowdswell Ins. 102; Laogdale v. Mason, 2 Park Ins. 965, 8th Eng. Ed.; 2 Marsh. Ins. 792, 3rd ed.

The *Sun Fire Office* adopted the clause in 1726, and one year afterwards added the words "civil commotion," in consequence of extensive losses by *riots*, where the offices contested payment unsuccessfully upon the plea of non-liability under the clause, "usurped power." (Shaw's Ellis Ins. 107.)

A number of cases were decided by Lord MANSFIELD, where this clause was involved, during which the exact extent and meaning of each form of expression used was given, and such they are held to be to this day. (Hawk. Pleas of the Crown, ch. 65, § 1; Mason v. Stansbury, 2 Marsh. Ins. 796, 3rd ed. *supra*; Bunyon Ins. 43.)

See Con. Stat. L. C., c. 68, § 3; *id.* U. C., c. 53, § 70.

(1). **INVASION**: A hostile attack or entrance into the possessions or domain of another.

The exceptional clause held not to extend to loss occasioned *proximately* by the burning of a bridge by order of the *military authorities*, to prevent the advance of an armed force of the public enemy. (1675.)

*Boon v. Etna Ins. Co.*, U. S. C. C. Dist. Conn., 4 Ins. Law Jour. 27; reversed *id.* 933, and authorities there cited; *St. John v. Ins. Co.*, 1 Duer N. Y. 371; *May Ins.* 488 *et seq.*

(2). **INSURRECTION**: A rising against the civil authorities. It is more than sedition and less than rebellion. (*Strauss v. Imp. F. I. Co.*, 17 Ins. Law Jour. 256; in *Missouri Penitentiary.*)

(3). **RIOT**: A tumultuous disturbance of the peace by three, persons or more. (*Lycoming Ins. Co. v. Schwenk*, S. C. Penn. 10 Ins. Law Jour. 13.) Ten make a *multitude*. (*Coke Lit.* 347.)

**AFFRAY**: Where two or more fight in public. (*Rev. Sta. Ind.*, § 1980; *Roscoe Crim. Ev.* 270; 15 Ins. Law Jour. 229.)

Where the house is destroyed by a riotous assemblage, the underwriter is not liable for the loss. It is immaterial that the *rioters* had assembled for lawful purposes and were afterwards guilty of a *riot*. Nor is it necessary that the guilt of the *rioters* shall be first proved by a criminal prosecution.

*Dapin v. Ins. Co.*, 5 La. Ann. 482, 3 Benn. F. I. Cases 128; *Drinkwater v. Ins. Co.*, 2 Wilson 363.

(4). **MOB**: A *mob* is ruled to be pirates. (*Harris v. Ins. Co.*, 50 Penn. St. 321.)

(5). **CIVIL COMMOTION** is an *insurrection* of the people for general purposes, although it may not amount to a *rebellion* where there is *usurped power*.

*Langdale v. Mason*, 2 Park Ins. 657, 1 Benn. F. I. Cases 16; *Spruit v. Ins. Co.*, 1 Jones Law N. C. 126; *Portsmouth Ins. Co. v. Reynolds*, 9 Ins. Law Jour. 606.

(6). **MILITARY OR USURPED POWER** is an *invasion* from abroad; or internal *rebellion* where armies are employed to support it, and the laws are dormant, and not a mere excess of jurisdiction by a lawful magistrate.

*Boon v. Aetna Ins. Co.*, U. S. C. C. Dist. Conn., 4 Ins. Law Jour. 27; reversed, U. S. C. C., 5 Otto 117, 6 Ins. Law Jour. 333; *Portsmouth Ins. Co. v. Reynolds*, C. A. Va., 9 Ins. Law Jour. 606.

**1675.** Where a few soldiers, having left their military company or organized force, for the purpose of firing the house through private wantonness, malice, or revenge, did so fire the same without any order or authority from any officer in command, then the firing was an act of private incendiarism, and not within the exceptions of the policy.

*Barton v. Home Ins. Co.*, 42 Mo. 156, U. S. S. C. 1872; 1 Jones Law N. C. 123; *Drinkwater v. Lond. Assur. Corp.*, 2 Wilson 363; *Heryford v. Aetna Ins. Co.*, U. S. C. C. Dist. Mo., 1869.

**1676.** PUBLIC AUTHORITIES: The order of a mayor of a city to blow up a building to prevent the spread of a conflagration is not "*usurped power*" within the meaning of that term in the policy. (*City Fire Ins. Co. v. Corlies*, 21 Wend. N. Y. 367.) See opinion of Judge Hare, upon the blowing up of buildings at the time of the Boston conflagration, 1872. (2 Ins. Law Jour. 315.)

**1677.** Underwriters are liable for loss of a building, under insurance, by being blown up with gunpowder and demolished to stop a conflagration, when it would have been soon inevitably burned in the progress of a fire from a neighboring building already in flames. (2 Ins. Law Jour. 315.)

The destruction of a building by *public authorities*, by use of gunpowder, when absolutely necessary to prevent the extension of a conflagration, becomes "a loss by fire," and the underwriter is liable, if insured, upon the ground that "a loss by explosion of gunpowder is a loss by fire." Hence, the liability of the insurer is not affected by the legality or illegality of the act of the *public authorities*.

*Pentz et al. v. Receiver Ins. Co.*, 9 Paige N. Y. 568; 2 Benn. F. I. Cases 186; *City Fire Ins. Co. v. Corlies*, 21 Wend. N. Y. 367, 1 Benn. F. I. Cases 753; *Field v. City of Des Moines*, S. C. Iowa, 4 Ins. Law Jour. 238; *Phillips v. Ins. Co.*, 14 Mo. 220; 3 Ed. Chy. 341; *Mayor N. Y. v. Lord*, 17 Wend. N. Y. 285; 3 Douglass 61; 13 Metc. Mass. 99; 11 Johns. N. Y. 451; 11 Peters U. S. 213; 10 Cush. Mass. 356; *Gordon v. Rymington*, 1 Camp. 123; 1 Philips Ins., § 1097; *Butler v. Wildman*, 3 B. & Ald. 398.

Where a building covered by insurance was *tor* down to

prevent the spread of fire, and partly paid for by order of the corporation :—

Held : That the insurers were liable for the full value of the building within the amount of the policy, less the amount received from the City, after deducting from such amount a proportionate share of the costs of recovery against the city. (*Mayor of N. Y. v. Lord*, 17 Wend. N. Y. 285.)

**1678.** Under the statute of New York, when the insured receives compensation from the municipality for damage to his building demolished to stop a fire, the *estimate of damage* under such statute is not binding as between himself and the insurer. The estimate of damage may refer to a building at the time already on fire, which might possibly have been saved. Besides it was between other parties. (9 Paige Chy. N. Y. 568; 3 Ed. Chy. N. Y. 341.)

## BY WILFUL NEGLECT.

**1679.** *Condition of Policy.*—"The best endeavors of the assured shall be used in saving and protecting the property from damage at and after the fire; and in case of failure so to do, this company shall not be liable for damage caused by such failure."

Underwriters are not liable for damage caused by failure or *wilful neglect* of the insured to take proper steps for the effective preservation of his property at and after the fire.

The insured is bound to do all in his power to save property at a fire, and to so deal with the salvage that the least possible injury may eventually happen to it. He cannot be justified in standing by and relying upon his policy for protection, while suffering others to misuse the goods. (**1574.**)

*Thompson v. Montreal Ins. Co.*, 6 U. C. Q. R. 319; *Willis v. Ins. Cos.*, 8 S. C. N. C., 8 Ins. Law Jour. 449; *Fernandez v. Ins. Co.*, 17 La. Ann. 131; *Webb v. Ins. Co.*, 14 Mo. 3; *Case v. Hartford Fire Ins. Co.*, 13 Ill. 676, 3 Benn F. I. Cases 349; *Wells v. Ins. Co.*, 6 Pick. Mass. 181.

"It is difficult to conceive any conduct more nearly approaching *fraud*, if not partaking of it, than for a party insured to abstain himself, or prevent others from using every possible means to extinguish the fire or save the property from destruction." (*Ellis Ins.* 17; *Shaw's Ellis* 55.)

While the insured must take due care of the salvage at and after a fire, he is not required to take steps to *restore* it to its condition before the fire, such as relaundrying a stock of gentlemen's furnishing goods. (**1573.**)

## BY REMOVAL.

**1680.** *Condition of the Policy.*—"Nor for loss or damage caused by removal of property from a building, except it be proved that such removal was necessary to preserve the property, in which case the damage shall be borne by the assured and the company in proportion as the sum hereby insured bears to the whole value of the property."

When *loss or damage* is caused by *removal* of goods from a building *not yet on fire*, but seriously threatened thereby, to preserve them from loss, such *removal* must be absolutely necessary, and the danger imminent, or the underwriter will not be liable.

May Ins. Bd. 2 494, and authorities cited. *Thompson v. Montreal Ins. Co.*, 6 U. C. Q. B. 319, 3 Benn. F. L. Cases 23; *Talamon v. Ins. Co.*, 16 La. Ann. 426; *Peoria F. & M. Co. v. Wilson*, 5 Minn. 53; Stat. Con. U. C. § 5.

Fear of a peril not inevitably or imminently impending, may not throw loss upon the underwriter, the insurance not being against *apprehensions* of a fire. Injury sustained by *removal* originates, not from necessity to save the property from *impending fire*, but from *anticipation* of damage from it.

*Hillyer v. Ins. Co.*, 3 Penn. St. 479; 2 Benn. F. L. Cases 497; *Agnew v. Ins. Co.*, 3 Phila. Rep. 193.

**1681.** But, on the other hand, in the case of *White v. Republic and Relief Insurance Companies* (5 Maine 31), the defendant refused to pay the claim of plaintiff, who, during the great fire at Portland in 1866, removed his stock from the vicinity of the flames to a place of greater security. *The place threatened was not destroyed, nor was the place whither the stock was removed.* The plaintiff claimed for the expense of removal. Verdict for the insured. (**1686.**)

**1682.** Cases have occurred where goods removed from burning building to a supposed place of safety were consumed during the prevalence of the *same fire*. Such cases would undoubtedly be covered by the policy; though it is not the general opinion among underwriters, by many of whom it is held that when goods have left the building in which they were covered, they are no longer under protection of the

policy. Such instances were frequent at the Chicago fire, A. D. 1871, and were all allowed.

**1683.** An exceptional case occurred within the experience of the author, where goods were removed from a burning building to a room some two squares distant, where they were again in peril, and removed from a subsequent fire two days after the first removal, before they could be arranged for adjustment of the first loss; the loss was quite heavy by theft during the second removal. In this case, the second fire being altogether disconnected from the first, the underwriters were not liable, and the adjustment became a matter of compromise.

**1684.** Existing circumstances must determine the necessity for removal: the danger may be so imminent and immediate that a failure to remove would be tantamount to *gross neglect* upon the part of the insured.

*Case v. Hartford Ins. Co.*, 13 Ill. 676, 3 Beon. F. I. Cases 349; *Brady v. Ins. Co.*, 17 Mich. 425.

"Where the insured has been apprised of the fire in time to remove the goods before the fire could reach them, and they, as reasonable and prudent men, knew that they could make such removal, but instead of attempting it had supinely stood by, and had seen the goods consumed, no court or jury would charge the company with the loss, unless covered by some rule which they were inexorably compelled to follow."

**1685.** Property must be removed, and guarded with reasonable prudence and care. It may be so carelessly removed and so unnecessarily exposed after removal, as to relieve the insurers from liability. (**1573**), and authorities *supra*.

#### EXPENSES OF REMOVAL.

**1686.** In the absence of any reference in the condition as to liability of the insurer to contribute to the expenses incident to such removal, the cases are conflicting, but the weight of authority is that such expenses are for the common benefit, and should be borne *pro rata* by insured and insurer the same as in payment of the loss or damage.

*Peters v. Warren Ins. Co.*, 14 Peters, U. S. 108; *Case v. Hartford F. I. Co.*, 13 Ill. 676, 3 Bennett's F. I. C. 349; *White v. Republic Fire Ins. Co.*, 57 Me 91; *Angell Ins.*, § 117; 1 *Philips Ins.* 645, 646; *Stat. Cond. U. C.*, § 5.

But when neither goods covered by the policy, nor the building containing them, were touched by the fire, but the goods were *damaged by removal*, under the reasonable apprehension that they would be reached by the flames:—

HELD: "The injury sustained by the insured in the removal of the goods was not a loss within the terms of the policy." (*Hillyer v. Ins. Co.*, 3 Barr. Pa. 470.)

The liability of the insurers in any case will depend measurably upon the imminency of the peril, and the reasonableness and expediency of the steps taken in the emergency.

**1687.** Insurance against fire was upon a stock of jewelry and cutlery; a fire happening in the immediate vicinity the insured, with the approbation of the insurers, procured blankets, and having saturated them with water, spread them on the outside of the store, whereby the building and contents were preserved, but the blankets were rendered worthless:—

HELD: "This loss was not covered by the policy, but was a subject of general average, to which insurer and insured should contribute in proportion to the amount which they respectively had at risk in the store and its contents. Buildings in the neighborhood which would have been endangered if the store had taken fire, and upon some of which the underwriters had outstanding policies, were *too remotely* affected to be liable to contribute." (*Wales v. Ins. Co.*, 6 Pick. Mass. 182; 1 Parsons Ins. 561.)

#### EXPENSES IN EXTINGUISHING FIRES.

**1688.** In this country these expenses are borne by the insured. In England they are provided for by stipulations of the policy; and form an additional liability to the sum insured, and are borne by the insured *pro rata* with the interest of the company. (*Bunyon Ins.* 46; *Dowdswell Ins.* 169.)

#### SALVAGE EXPENSES.

**1689.** Expenses incurred in saving property *at and during* fires, in fire insurance become a portion of the loss, and are borne by the insurers within the amount of the policy. (**1688.**) All expenses for the care of "*salvage*" *after* a fire fall upon the owner.

*Lawrence v. Van Horne*, 1 Caines N. Y. 278; *Watson v. Ins. Co.*, 7 Johns. N. Y. 58; 8 id. 307.

## MEASURE OF DAMAGE.

**1690.** *Condition of the policy.*—"The cash value of property destroyed or damaged by fire shall in no case exceed what would be the cost to the assured, at the time of the fire, of replacing the same; and in case of the depreciation of such property, from use or otherwise, a suitable deduction from the cash cost of replacing shall be made, to ascertain the actual cash value."

**1691.** DAMAGE in insurance is classed as *actual* and *constructive* or *consequential*.

**1692.** ACTUAL DAMAGE is that which arises directly from the fire and its immediate consequences; it must be determined without reference to extraneous circumstances. By the conditions of all fire policies the *cash value* to the owner of the property destroyed, at the time of the fire, is the true criterion for estimating the *measure of damage*. The theory of the measure of damage is the exclusion of profits under insurance. (N. Y. Civil Code, § 1370.)

## VALUE.

**1693.** VALUE may be defined as of two kinds, *value in use*, or the utility of an object for use; and *value in exchange*, or the worth of an object in purchasing other goods. *Adjustment values* always have this latter signification.

Peddie v. Quebec F. I. Co., 1 Stuart L. C. 174; Marchesseau v. Ins. Co., 1 Rob. La. 438, 2 Benn. F. I. Cases 166; Snell v. Fire Ins. Co., 4 Dall 430; s. c. 1 Wash. C. C. 509; Ellmaker v. Franklin F. I. Co., 5 Penn. St. 183; s. c. 6 Watts & S. 439; Hoffman v. Ins. Co., 1 La. An. 216; Ins. Co. v. Hunter, 144 C. C. S. 1137; Home Ins. Co. v. Gaddis *et al.*, S. C. Ky., 10 Ins. Law Jour. 774.

## MARKET VALUE.

**1693a.** MARKET VALUE is the price at which property can be purchased in "open market" from first hands, as opposed to *sale price of patented* or exclusive articles which are not to

be found in "open market," as there can be no competition for them. This "*market*" value or *sale price* includes, in addition to *cost*, the manufacturer's or merchant's *profit*, and the factor's *commission* upon his sales, which are not subjects of indemnity under an insurance upon goods only.

Equitable F. & M. Ins. Co. v. Quinn, 11 L. C. R. 170; Douglas v. Murphy, 16 U. C. Q. B. 113; McQuaig v. Ins. Co., 18 U. C. Q. B. 130; reversed, Grant v. Etna Ins. Co., L. C. Q. B. App. 1860; Mack v. Ins. Co., U. S. C. C. Dist. Mo., 9 Ins. Law Jour. 680; Fowler v. Ins. Co., S. C. N. C., 6 Ins. Law Jour. 432; Wyne v. Ins. Co., 71 N. C. 121; Harris v. Eagle Ins. Co., 5 Johns. N. Y. 368.

**1694.** COST is not always "present value." Property may be actually *worth* much less or more than it cost. *Present value* at the time of loss is the figure sought. Insurance companies are *cash* purchasers, and entitled to the best values the market affords. (2 Mass. U. S. C. C. 48, 393; 3 Story U. S. C. C. 422.)

**1695.** TO MANUFACTURERS OR PRODUCERS, at the place of production, the measure of damage will be the "market value" of the raw material, on the day of the loss, purchased for *cash*, plus expenses of manufacture, without allowance for plant, rent, interest, profits, or outside expenses of carrying on the business.

Marchesseau v. Ins. Co., 1 Rob. La. 438; Bunyon Ins. 110.

If the producer's goods be consigned to a *factor* or *commission merchant* for sale, the freight and expenses of transportation from the place of manufacture to the factor's store are additions to the cost, but *commissions* to be paid to such factor are not a part of the *cost* covered by insurance upon the goods; these commissions come out of the *profits*, and are never paid until the goods are sold; they are not covered by insurance upon burned goods sold to the insurers. (**694.**)

1 Philips Ins. 122, 161; 1 Arnould Ins. 201; 1 Sandf. N. Y. 551; 4 Ins. Law Jour. 503.

If the insured subject be a *patented article*, the measure of damage will not be increased, as the *cost of manufacture* is not increased thereby, though the *sale price* may be increased, but *realized only upon the sold articles*, not upon those burned.

Ins. Co. v. Sennett, 37 Penn. St. 205.

**1696. To MERCHANTS, JOBBERS AND DEALERS wholesale:**

The measure of damage will be the actual *cash* value of the goods in "open market" in first hands; the insurers, under the operation of the reinstatement clause—being cash purchasers—are entitled to the best the market affords at prices quoted on the day of the fire.

Bunyon Ins. 101; Hoffman v. Aetna Ins. Co., 1 Rob. N. Y. 501; s. c. 19 Abb. Pr. 325; affirmed, 32 N. Y. 495; Wolfe v. Ins. Co., 1 Sandf. N. Y. 124; affirmed, 3 Seld. N. Y. 583; Lazare v. Phoenix Ins. Co., 8 U. C. C. P. 135; Equitable F. I. Co. v. Quinn, 11 L. C. R. 170.

**1697. To COMMISSION MERCHANTS AND FACTORS: who**

having possession of the property, may insure it in their own names, unless the stipulations of the policy prevent, the measure of damage will be the *cost to the owner, who is the real person insured*, plus expenses incurred in getting the goods to the factor. This class of insurance is usually done under what is called "the usual commission clause." (713.)

1 Hall N. Y. 81; 46 N. Y. 605; 1 Duer Ins. 54 n.; 1 Philips Ins. 85, 89, 91; Cal. Civil Code, § 2589.

**1698. "GOODS SOLD BUT NOT DELIVERED:"** for goods covered under this clause, remaining in the hands of the *vendor*, the measure of damage will be the cost to the *vendor* of replacing the goods on the day of the fire, *for cash*, without allowance for profit made upon the original sale. Any such allowance would enable the *vendor* to make *two* sales instead of one, with the accompanying profit upon both. This would be prevented by the insurers replacing the goods themselves. (1206.)

1 Bunyon Ins. 100.

**1699. To CONSUMERS:** the measure of damage would be the price of reinstatement by the insurers, or the cost to the insured in the retail market, on the day of fire.

Ellmaker v. Franklin Ins. Co., S. C. Pa., 2 Benn. F. I. Cases 519; Franklin Ins. Co. v. Hamill, C. A. Md., 1 Gill. 87, 2 Benn. F. I. Cases 567.

**1700.** The difference between the three classes of insured, producers, jobbers, and consumers, may be well illustrated by

an example laid before the Fire Underwriters' Association of the Northwest, at one of its sessions, where the question of *measure of damage* was under discussion, in effect as follows :

"A railroad depot was consumed ; among its contents was a lot of sewing machines, of which, say 20 belonged to the manufacturers, and were produced at a cost of \$20 each ; another lot of 5 belonged to a jobber for which he had paid the wholesale market price, say \$45 ; and another single machine was the property of a lady, for which she paid, say \$65, retail market price. All being burned under insurance, what will be the measure of damage to each owner ? Will insurers pay manufacturers, jobber and the lady \$65 each for the machines ? Which 'market price' will govern the adjustment ?

**1701.** For GOODS IN BONDED WAREHOUSES, *cotton warehouses and presses, grain elevators and grain or storage warehouses*, the warehouseman's book is the test of ownership, and his receipt (when honest) is the best evidence to substantiate a claim ; such receipts *have been found* to be entirely fictitious, especially in grain elevators. (**1588.**)

Custom House duties : *Wolfe v. Howard Ins. Co.*, 1 Sandf. N. Y. 124 ; affirmed 3 Seld. N. Y. 583 ; *Lazare v. Phoenix Ins. Co.*, 18 U. C. C. P. 135 ; *Equitable F. I. Co. v. Quinn*, 11 L. C. R. 170.

Whiskey Tax : *Security Ins. Co. v. Farrell*, S. C. Ill., 2 Ins. Law Jour. 302 ; *Ins. Co. v. Thompson & Co.*, U. S. S. C., appeal from U. S. C. C., D. Ky.

**1702.** "Where the owner of grain deposited the same in a warehouse, taking an ordinary warehouse receipt therefor, which did not explicitly state the character of the transaction whether as a sale or a mere bailment—it is competent to show that, according to usage in such cases, warehousemen do not keep the identical grain deposited, but ship and sell it without regard to the identity of the grain deposited by any particular person ; and that depositors at a warehouse do not expect to take their grain away, but to get their money at the market price on the day they demand it—and this, as tending to give character to the transaction as a sale rather than a bailment." (So, *Australian Ins. Co. v. Randell*, L. R., 3 P. App. 101.)

**1703.** AUCTION STOCKS, "*dollar stores*," *pawnbrokers*, *branch stores*, and other similar *irregular* stocks, generally have no fixed values, being in almost every instance damaged, imperfect, or refuse goods purchased at low figures.

Under a municipal law of the City of Philadelphia, pawnbrokers *must* keep an insurance against fire upon their stocks to the amount of \$5,000 at least, for the security of their pledges, and file their policies in the mayor's office.

**1704.** There is no indemnity for loss on *undamaged goods*. Fire underwriters are not liable for loss *owing to the assortment being broken*; so if, out of whole packages or bales of goods, only a few articles are damaged, the insured *will not be entitled to have the sound and the damaged goods sold together* in consequence as customary in the marine branch.

**1705.** Nor is it customary in fire insurance to except any class of articles from the benefit of indemnity for a partial loss which would not be proper subjects for indemnity from a total loss; though in marine insurance there is such a practice, whereby frivolous claims and complicated adjustments for breakage and spoiling certain goods are avoided.

**1706.** In fire policies of the earlier companies, it was customary to provide *generally* that there should be no liability unless the loss exceeded *three* per cent.—the "particular average" condition of the marine policy (5); but the stipulation is not used in modern fire policies.

#### SALES AT AUCTION.

**1707.** When goods are so much damaged as to be unsalable in the ordinary mode, a *fair sale at auction* may be made *by the insured*, after reasonable notice to the underwriters, or with their knowledge, and the price at which they are sold is a proper criterion by which to estimate the damage to the insured. But, if sold without the knowledge of, or notice to the underwriters, such price is *not sufficient evidence of the value* of the goods in their damaged condition.

*Henderson v. Ins. Co.*, 10 Rob. La. 164; *Hoffman v. Ins. Co.*, 1 La. Ann. 26, 2 Benn. F. l. Cases 396; *Angell Ins.* 323.

Underwriters sometimes take *damaged* goods, by agreement, and dispose of them at *auction* for *cash* "for account of whom it may concern," as the most ready and equitable means of arriving at "*present values*" of the same. But *sound* goods are never thus taken, as the underwriter has no interest in them beyond their ascertained value in the adjustment.

**1708.** In case of sales of *damaged goods at auction*, the adjustment is made upon the gross sales, less the expenses of such sale. (McBride v. Marine Ins. Co., 7 Johns. N. Y. 431.)

**1709.** Although there is no abandonment in fire insurance underwriters sometimes take *damaged* property at *cost*, or *market value*, as *sound*, for their own benefit, paying the insured as for a total loss, when the *measure* of *damage* cannot be otherwise satisfactorily agreed upon and the amount at stake is large. Should the property eventually bring more money than was paid to the insured, they will be entitled to the whole sum as purchasers of the goods, as it is a part of the general law that where a vendor has parted with goods at a price, he has lost all title to accretions subsequently arising out of such goods.

**1710. MACHINERY:** The insured is entitled to recover only the *actual damage* to machinery, which may be approximately ascertained by estimating the cost of fitting up *new* machinery of similar description, and deducting therefrom the difference in *value* between *old* machinery, before the fire, and the *new* when fitted up. (Vance v. Forster, 2 Crawf. & D. 118.)

#### "PROPER VICE."

**1711.** Fault is presumed to proceed from the thing itself, when it is of a nature to spoil or perish. "Thus *deteriorations, diminutions* and *losses*, that happen through the '*proper vice*' of the thing, shall not fall upon the insurer." (1667.)

Emerigon Ins., Meredith's Ed., 312, 315; 2 Arnould Ins. 758; Park Ins. 111; 2 Valin Comm. 80.

**1712.** *Physical corruption*, that *corrodes, spoils, and destroys* merchandise; *moulding, spotting, dampness, discoloration*, etc., unless resulting from the peril insured against; *decay, deterioration, heating, spoiling, perishing*, etc., as of fruits and other like perishable articles; *evaporation, fermentation, shrinkage, souring*, etc., as of wine or beer, are *not* at the risk of the underwriters.

2 Magens' Essays 173, 195; Weskett Ins. 326.

**1713.** *Breakage and leakage* are not to be paid for by the insurer unless caused directly by the peril insured against. In the matter of breakage of bottled liquors, the Custom House allowance is *five* per cent. in lieu of tale; 10 per ct. on beer, ale and porter.

2 Arnould Ins. 769; Emerigon Ins. 311; Weskett Ins. 326; Story U. S. C. C. 165.

**1714.** In marine insurance, death of *animals* or *slaves*—when the slave trade was permitted—from sickness, was held to be "*proper vice*," and relieved the insurer; but otherwise when they were killed. If *slaves* were killed or thrown overboard in a revolt, or to relieve the ship in a tempest, the loss became one of general average.

Emerigon Ins. 313; Park Ins. 25, 56a; Marsh. Ins. 418, 419; 2 Arnould Ins. 761, 762.

**1715.** When *property has no fixed market value*, as paintings, sculpture, or other articles of art or vertu (1 Brown's Chy. 467; 1 Cox Chy. 27); or any item of property not kept on hand for sale, but which must be made to order, the *cost of reproduction* may not always represent the *value* of indemnity, for an article may not be worth reproduction, as a piece of costly machinery, useless, or constructed upon false principles; or a *patented article*, owned by one not interested in the patent and who cannot lawfully use the article. (Ins. Co. v. Sennett, 37 Penn. St. 205.)

**1716.** In every case where the thing replaced is, because useless or otherwise, worth less than the cost of replacement, a deduction should be made from such cost, because the insured, not being compelled to expend money for a duplicate

would gain an advantage to which no principle of indemnity would entitle him. It will be for the insurer to show that the replaced articles will be of less *value* than the cost.

In a policy on reaping-machines, evidence showed that, on account of defective principles, the machines were valuable only as so much wood and iron; but the court instructed the jury that "the cost of construction, and before it was tried in the field, would be the *measure of damage*." Upon appeal this ruling was reversed, and it was

HELD: Such instruction was erroneous; the *measure of damage* was that agreed upon in the policy, to wit, "the *actual cash value* at the time of the loss or damage." What it would cost to replace the machines did not furnish the rule for the damages which the company must pay to make good the loss. Nor was the fact that the machines were constructed *under a patent* of any importance; what they were worth at the time of the fire was, by agreement of the parties, to be the measure of their *value*, and this must be ascertained by testimony, as is done in every other case where the value is not fixed. (*Ins. Co. v. Sennett*, 37 Penn. St. 205.)

**1717.** The *measure of damage* for loss on BUILDINGS is the cost of reinstating such building as nearly as possible in the same condition as before the fire, without deduction for any contingent or incidental disadvantage, such as depreciation of property since the erection of the building, or from other causes whereby the *value* for occupancy, at the time of the loss might have been reduced below the cost of reinstatement. (1839.) (1 Hall N. Y. 41.)

**1718. BETTERMENTS.** Such *improvements* to a building as render it better than mere repairs, and when specifically covered by the policy, are to be paid for at *present value*.

**1719.** "HOUSEHOLD FURNITURE" includes all articles in ordinary use in the family, including a *piano* or other musical instrument, *sewing-machine*, and similar household appendages necessary or convenient for housekeeping, including also beds, bedding, and linen, when not mentioned specifically; silver forks and tea and table spoons are not included in the word "plate." (*Hanover Ins. Co. v. Mannassan*, S. C. Mich., 3 Ins. Law Jour. 668.)

*Wearing apparel* and *family stores*, being articles of consumption, are not included in the term *household furniture*.

2 P. Will. Chy. 320; 9 Vesey 323; 2 Eng. Law & Eq. 452; Clary v. Ins. Co., S. C. O., Wright 228, 1 Benn. F. I. Cases 432.

**1720.** "*Household goods*": This term is much more comprehensive than the last, and embraces everything connected with the house, as furniture, personal estate, movables, chattels, effects, etc. (1297.)

**1721.** *Household furniture, "useful and ornamental."* When the conditions of the policy do not require that *paintings engravings*, and *articles of vertu* shall be specifically insured such articles, if not of excessive value in themselves, or disproportionate in amount to the other furnishings of the house, or the circumstances of the owner, would in equity be deemed to be covered by the policy. *Articles of personal adornment* would *not* be included in this clause. (1298) and authorities cited. See also *Lea v. Boxard*, App'l. of Revision of Taxes and Com. Pleas No. 2, Phila., as to oil paintings being furniture.

## SCHEDULED ARTICLES.

**1722.** When *pictures* or other *costly* ornamental furniture are insured according to a *valued* catalogue or *schedule*, such value will be enforced unless qualified by a condition in the policy, as it might be contended that such *schedule* was of the nature of a *valued* policy, and would waive proof of value in case of loss. (1878.) (*Luce v. F. Ins. Co.*, U. S. C. C., N. D. Mich., 2 Ins. Law. Jour. 444.)

The following form would obviate this difficulty:

## FORM OF SCHEDULE.

"As per SCHEDULE hereto attached, and made a part hereof. No loss on any article therein named to exceed the price thereto affixed."

(The *schedule* should be properly headed something like the following, and referred to in the policy by number.)

NO.	ARTICLE.	PRICE.	AGGREGATE.

## VALUES OF INSURABLE INTERESTS.

**1723.** A large amount of ordinary fire insurance is upon interests other than ownership of the property, and the *value* of such qualified interest not unfrequently becomes a question of some difficulty to solve correctly in cases of loss. (653.) For authorities see the several subjects.

**1724.** The *value* of a *mortgagee*, *pledgee*, or *mechanic's lien* is limited to the amount of the *debt* for which the lien is created; and in case of loss, the underwriter is liable only for the amount of the *debt* at the time of the loss, within the terms of the policy. (669.)

**1725.** Of *mortgageor*, *pledgeor*, *vender*, *reversioner*, *devisee* or *legatee*, is limited to the *value* of the interest retained in the property under their several titles at the time of the loss. (932.)

**1726.** EQUITY OF REDEMPTION: Any *excess* of *value* over incumbrance is the beneficial interest, where the owner of the equity is not liable for the indebtedness. (671.)

**1727.** OF LESSEE AND LESSOR: In lease policies, the actual *value of rent*, and not the sum covered by the policy, is the *measure of damage*. A *lessee* can only recover the actual value of the tenement for "*occupation*," subject to the rent. The question for the jury is, "How much would a stranger, having no engagements or contracts pending, have given for the unexpired lease when the fire occurred?" Neither the *lessee* nor *lessor* has any interest in the building as such. (277, 688.)

**1728.** Of *leasehold*: This class of interest is more valuable at the commencement than at the expiration of a lease. The estimate upon a building on leasehold property must be the *value* of such a building generally, and not subject to any

such incidental disadvantage as the liability to a removal thereof at the termination of the lease, especially if this disadvantage be contingent. (279.)

**1729.** Of *tenant*: The value of a lease to a *tenant* is the amount for which it could be sold, subject to the payment of the rent. (691.)

Of *tenant for life*, or *life interest*: Value is computed by the ordinary life-tables. (693.)

**1730.** Of *executors*, *administrators*, and *trustees* generally, is the full extent of the value of the property, for the use of their several trusts. (696.)

**1731.** Of *bailees* generally, such as *warehousemen*, *agents*, *factors*, *consignees*, and *commission merchants*: These always have an interest to the value of their liens for advances, charges, commissions, or interest on property bailed; and they may, when holding possession, insure the property to the full value, in their own names, and recover for loss as *trustees* for their several principals, unless specially stipulated against in the policy. (696.) (11 Bennett & Smith's Eng. Eq. R. 4.)

**1732.** Of *underwriters*: Is limited to the *value* of the amount at risk upon the property insured under his own policy. (718.)

**1733.** Of *the insured*: Is limited to the sum he may lose under insurance in one company, although secured by double insurance in a second company, when the conditions of the policies permit it.

**1734.** Of *railway* or *steamboat companies*: Outside of their own property, is limited to the amount they may be liable for as damages upon any particular risk insured against by them. (723.)

Of *passenger carriers*: When under fire insurance as such, is limited to their liability as common carriers for loss or damage to the baggage of passengers in their charge. (1363.)

## DAMAGES, CONSTRUCTIVE OR CONSEQUENTIAL.

*Condition of the policy.*—"All such immediate loss or damage."

**1735.** "Although the maxim that '*causa proxima non remota spectatur*' is the rule governing the liability of insurers, yet in its application the words '*proximate cause*' are not to be understood, in their strict and limited sense, as meaning only that cause which immediately precedes and directly occasions a loss."

"It is settled now that insurers, both under marine and fire policies, are not only responsible for losses produced by the direct action of a peril insured against, but losses in their nature consequential."

There are *two* classes of *constructive* losses for which insurers are held answerable.

**1736.** *First, CONSEQUENTIAL:* When the loss, although not a necessary, is a *natural* consequence of the peril insured against—by *natural* meaning a usual and probable consequence—and such as it is reasonable to believe was in the contemplation of the parties when the contract was made, such as damage by water in extinguishing fire; willful or careless destruction of property by firemen or others; falling of floors or walls; tearing down buildings to prevent spreading of fires, etc., etc. (**1662.**)

1 Phillips Ins. 634, § 109; Hillyer v. Ins. Co., 3 Penn. St. 470, Whitehurst v. Ins. Co., 6 Jones Law N. C. 352; 1 Parsons Ins. 552 n.; St. John v. Ins. Co., 1 Duer N. Y. 371; 2 Arnould Ins. 704.

**1737.** Or, when the property at risk is extricated from the peril by which it must have been destroyed by means not anticipated by the parties, but by which it is taken from, and never again restored to the possession of the insured, as *theft* at and after the fire. This contingency is now usually separately provided for in a stipulation of the policy. (**1536, 1771.**)

**1738.** *Second, CONSTRUCTIVE:* Insurers are *not* liable for *constructive* damages, such as loss of time, or of profits from derangement of business consequent upon the fire. These

are too indefinite and intangible in their natures to be made subjects of legitimate insurance.

*Leonarda v. Phoenix Ins. Co.*, London, 2 Rob. Lw. 131; *Wright v. Pole*, 1 A. & E. 621; 3 Rawle & Man. 810; 1 Sandf. N. Y. 551; 9 C. C. S. (N. S.) 694.

**1739.** The insured cannot recover for loss occasioned by interruption or destruction of business carried on in a building burned under insurance; nor for any gains or profits which were morally certain to inure to him if it had remained uninjured; nor for wages of servants which insured had to pay though, in consequence of the fire, he could not employ them. The only loss or damage insured against are those happening by fire; and, if the underwriter neglects to repair or make good the same to the insured, the only compensation to which he will be entitled is the actual loss or damage by fire, and interest thereon from the time it may be due. (1650.)

1 Benn. F. l. Cases 440; 2 *id.* 180; *Niblo v. N. Am. Ins. Co.*, 1 Sandf. 551; *Ellmaker v. Ins. Co.*, 5 Penn. St. 183; *Menzies v. North British Ins. Co.*, 9 Cases in Court of Sessions N. S. 694.

#### FREIGHT AND CHARGES.

**1740.** There are *two* distinct methods in use by adjusters for estimating *freight* and *charges* upon merchandise in the settlement of losses, producing a marked difference in the final results. Adjusters are not entirely harmonious as to which is the more correct and equitable.

**1741.** The *first* method is to recognize *freight* and *charges* as entering into the cost of the merchandise throughout the calculation of values, at some estimated rate per cent., varying according to the class of goods and as the mode of transportation may be more or less expensive.

##### EXAMPLE 1.

Statement of loss as follows:—

Merchandise per inventory cost.....	\$45,000 00
“ purchased to date .....	25,000 00
<i>Freight</i> and <i>charges</i> , four per cent.—\$70,000 00.....	2,800 00
Total merchandise.....	\$72,800 00

## Deductions :—

Sales to date of fire.....	\$27,000 00	
Less profit, 12½ per cent..	\$3,000 00—\$24,000 00	
Merchandise saved—worth.....	40,000 00	
		<hr/> \$64,000 00
Total loss.....		\$8,800 00

**1742.** The *second* method is to discard all estimate of *freight* and *charges* until the “amount destroyed” has been ascertained, when the proper allowance is made upon this amount.

## EXAMPLE 2.

## Statement of loss as follows :—

Merchandise per inventory, at cost.....	\$45,000 00
“ purchased to-date.....	25,000 00
Total merchandise.....	<hr/> \$70,000 00

## Deductions :—

Sales to date of fire.....	\$27,000 00	
Less profit, 12½ per cent....	3,000 00	
Cost of goods sold .....	\$24,000 00	
Merchandise saved—worth.....	40,000 00	
		<hr/> 64,000 00
Amount destroyed.....		\$6,000 00
Add freight and charges, four per cent.....		240 00
Total loss.....		<hr/> \$6,240 00

Thus making a difference in this case of \$2,560 against the insured.

**1743.** The equity of the adjustment is undoubtedly with the *first method*, for *freight* is as much a part of the cost of merchandise as is the money paid for it. A ton of grindstones at Berea, O., would cost perhaps \$10, and to get them to St. Joseph, Mo., would cost another \$10; would the value of grindstones at St. Joseph be \$10 or \$20? And in case of loss upon which sum would the *value* be predicated? Our oldest and soundest adjusters recognise the *first method* as the correct one. “Cost of transportation adds to value.” (2 Valin's Comm. 147.)

**1744.** In the two examples cited above, the “merchandise per inventory” is supposed to be at *invoice* value. If allow-

ances have been made to bring the merchandise to *cash* values, the *freight* charges in the first example should be estimated on the purchases only. And so with the salvage; if sound goods, at cost or invoice value, then the freight should be added to correspond with the present value.

## APPRECIATION AND DEPRECIATION

### IN VALUES.

The basis of fire adjustments is *present values*, and it frequently occurs that property may be worth more or less than the invoice price, in which event the respective party should receive the benefit.

### APPRECIATION IN VALUE.

**1745.** When all, or any portion of a stock, may have increased in value subsequent to its purchase, it will be sufficiently correct, for all equitable purposes, to add the average rate or amount of such *appreciation* to the sum "found to be on hand at the time of the fire." The insured will then reap the benefit of such increase in value throughout the subsequent calculations, pro and con, which he would not do if the rate were added to the sum of the "ascertained loss" only. (1743.)

### DEPRECIATION IN VALUES.

**1746.** The same general principle holds good, as to the insured, in *depreciations of value* from any cause, subsequent to purchase, as in *appreciation*. The "amount on hand at the time of the fire," as found at *cost price*, is subject to increase or deduction, as the case may be, to bring the stock to *present cash value*.

*Depreciations in value* do not affect purchases, and are not supposed to affect the inventory price of stock on hand at any given time, as such inventory should be taken at the then *cash* value of the articles, after due allowance for deterioration, changes of fashion, etc. Thus the balance only will be affected. Hence, *depreciations* legitimately come out of the "amount

on hand at the time of the fire." If deducted from the "amount of the ascertained loss," it gives the insured the benefit of full value on the difference between the "amount on hand at the time of the fire," and the amount of the ascertained loss, in all intervening calculations to which he is not entitled.

If an inventory of "sound goods" saved from a fire be made at *invoice prices*, with charges added, the same deductions should be allowed for depreciation in value as were charged upon the "amount of goods on hand at the time of the fire." But, if taken at *present cash values*, as in the case of damaged goods under appraisal, no such allowance should be made.

**1717.** The following example will illustrate the foregoing principles:—

*First:* Appreciation in value upon a specific item of the stock since its purchase.

*Second:* Depreciation in value of items from a decline in market price since purchase.

*Third:* Depreciation of the remainder from being shop-worn, old fashioned, etc., since inventory.

EXAMPLE.

Merchandise, per inventory, <i>cash value</i> .....	\$45,000 00
“ purchased since—cost, .....	25,000 00
Freight and charges on \$25,000, at four per cent.....	1,000 00
Total stock .....	\$71,000 00
Less sales, to day of fire.....	\$27,000 00
Profits, 12½ per cent.....	3,000 00—21,000 00
Cost of stock on hand at time of fire.....	\$47,000 00
Add advance in value—bbls. flour.....	3,000 00
Cost and appreciated value at time of the fire.....	\$50,000 00
Less depreciation on sugars.....	\$1,500 00
“ “ “ whisky.....	1,000 00
“ “ “ general stock.....	5,000 00—7,500 00
Cash value of stock at time of fire.....	\$42,500 00

In the foregoing example *freight and charges* were estimated upon the amount of purchases only, \$25,000 as it is supposed that in the inventory the *cash value* included freight as part of the cost.

## ESTIMATING PROFITS.

**1748.** Profit is made upon the *cost* of goods sold, not upon the *price* obtained for them, which latter embraces both cost and profit. Hence profit is to be estimated only upon the actual *cost* of the property, without any allowance for storage, rent, insurance or other ordinary business expenses. This *profit*, when ascertained, is to be deducted from the *sales*, to ascertain the original cost of the property *sold*. The larger the ratio of profit allowed, the smaller will be the amount to the credit of the Company, and *vice versa*.

**1749.** The *modus operandi* of arriving at *cost* of merchandise, at an estimated rate per cent. of *profit*, when only the amount *sold* is given, is the same as used by bankers in calculating interest and discount. This result can be reached by either of two processes, which may be designated as the *aliquand* and the *aliquot* process; the former is applicable to any given rate of profit; the latter only to an aliquot, or even part of one hundred.

The *aliquand* process will give the *cost* of the property direct; the *aliquot* process will give the *profits* on the sales

## THE ALIQUAND PROCESS.

**1750.** RULE: When the rate per cent. is an *aliquand*, or an even part of one hundred, the proper divisor will be found by adding 100 to the given rate per cent., thus: 103 for *three* per cent.; 109 for *nine* per cent.; 115 for *fifteen* per cent.; 126 for *twenty-six* per cent.; and so on for any *whole number*.

**1751.** But when the rate per cent. is a *mixed number*, as  $7\frac{1}{2}$ , the divisor will be 107 $\frac{1}{2}$ ; for  $9\frac{1}{2}$  per cent. it will be 109 $\frac{1}{2}$ ; for  $12\frac{1}{2}$  per cent. it will be 112 $\frac{1}{2}$ ; for  $16\frac{1}{2}$  per cent. it will be 116 $\frac{1}{2}$ ; and so on for any other *mixed number*, requiring, however, the addition of ciphers to the gross *sales*. *Mixed numbers*, when aliquot parts of one hundred, as  $8\frac{1}{4}$ ,  $12\frac{1}{2}$ ,  $16\frac{2}{3}$ ,  $33\frac{1}{3}$ , are more readily worked out by the *aliquot* process.

The *arithmetical* RULE is a simple proposition of the "Rule of Three," as follows:—

As the estimated rate per cent. of profit, with 100 (per cent.) added, is to the amount of the gross *sales*, so is 100 (per cent.—the *cost*) to the answer.

## EXAMPLE 1ST : WHOLE NUMBER.

**1752.** Supposed sales, \$1,500 ; estimated profit, 15 per cent

*Statement :* As 115 : 1,500 :: 100.

Multiply the second by the third, and divide by the first ; the result will be 1,304.35—the *cost* ; which, deducted from \$1,500, the gross *sales*, will leave \$195.65 as the profits, which sum is exactly 15 per cent. upon the *cost*.

*Proof :* Multiply 1,304.35, the *cost*, by 15, the rate per cent., cut off for ciphers, and the result will be \$195.65, the *profit* as found above.

## EXAMPLE 2ND : MIXED NUMBER.

**1753.** Supposed sales, \$2,500 ; estimated profit,  $9\frac{1}{2}$  per cent.

*Statement :* As 109.50 : 2,500.00 :: 100.

Proceed as in *Example 1st*, and the result will be \$2,283.10, the *cost* ; which deducted from the *sales* gives \$216.90 as the *profit* : being  $9\frac{1}{2}$  per cent. on the *cost*.

**1754.** The *mercantile* RULE for estimating an *aliquand* part is much shorter:—

The sum of the *sales*, with *two* ciphers added for a *whole* number, or *four* for a *mixed* number, divided by the given rate per cent., with 100 added, will give the *cost* direct ; which, deducted from the gross *sales*, will indicate the profits.

## EXAMPLE 3RD : WHOLE NUMBER.

**1755.** Supposed sales, \$1,500 ; estimated profit, 15 per cent.

Divide 1,500.00 by 115 (the figures indicated for 15 per cent.) ; the result, \$1,304.35, is the *cost*, as in *Example 1st*. *Proof*, the same.

## EXAMPLE 4TH : MIXED NUMBER.

**1756.** Supposed sales, \$1,500 ; estimated profit,  $12\frac{1}{2}$  per cent.

Divide 1,500.00.00 by 112.50 (the figures indicated for  $12\frac{1}{2}$  per cent.), the result, 1,333.33, is the *cost* ; this sum deducted from the gross *sales* gives \$166.67, as the *profit*, which is just  $12\frac{1}{2}$  per cent. ( $\frac{1}{4}$ ) of the *cost*.

## THE ALIQUOT PROCESS.

**1757.** RULE : When the estimated rate per cent. is an *aliquot* or even part of one hundred, the proper divisor is obtained by dividing 100 by the given rate, and adding *one* to the product ; upon the same principle as adding 100 in the *aliquand* process, thus : at  $12\frac{1}{2}$  per cent., 8.8 (equivalent to 100 per cent.) represent the *cost* ; 1.8 (equivalent to 12.50) added represents the *profit*, the 9.8 being equivalent to 112.50 (cost and profit) in the *aliquot* process.

**1758.** The following table will exhibit the *divisor* for any *aliquot* part of one hundred, from one to fifty per cent :—

TABLE OF ALIQUOT PERCENTAGE,  
OR EQUAL PARTS OF 100.

Percentage	Parts	Divide by	Percentage	Parts	Divide by
1.00	100th	101	5.00	20th	21
1.01 $\frac{1}{2}$	.96 "	97	6.25	16 "	17
1.25	.80 "	81	6.66 $\frac{2}{3}$	15 "	16
1.56 $\frac{1}{4}$	.64 "	65	8.33 $\frac{1}{3}$	12 "	13
1.66 $\frac{2}{3}$	.60 "	61	10.00	10 "	11
2.00	.50 "	51	12.50	8 "	9
2.08 $\frac{1}{4}$	.48 "	49	16.66 $\frac{2}{3}$	6 "	7
2.50	.40 "	41	20.00	5 "	6
3.12 $\frac{1}{2}$	.32 "	33	25.00	4 "	5
3.33 $\frac{1}{3}$	.30 "	31	33.33 $\frac{1}{3}$	3d	4
4.00	.25 "	26	50.00	half	3
4.16 $\frac{2}{3}$	.24 "	25			

PROCESS: Divide the amount of *sales* by the given figure in the table opposite the estimated rate per cent.; the result will be the *profits*, which deducted from the *sales*, will give the *cost* of the goods.

EXAMPLE 5TH: WHOLE NUMBER.

**1759.** Supposed sales, \$1,500; estimated profit, 10 per cent.

Divide 1,500 by 11 (the figure indicated in the table for 10 per cent.), the result, 136.36, is the *profit*, which deducted from 1,500, the *sales*, gives 1,363.64 as the *cost*.

*Proof:* Simply divide the *cost* by 10, as 10 per cent. is 1-10 of 100.

EXAMPLE 6TH: MIXED NUMBER.

**1760.** Supposed sales, \$2,100; estimated profit, 16 $\frac{2}{3}$  per cent.

Divide 2,100 by 7 (the figure indicated in the table for 16 $\frac{2}{3}$  per cent.), the result is 300, the *profit*, which deducted from 2,100, the *sales*, gives \$1,800 as the *cost*.

IDENTITY OF INSURED PROPERTY.

CHATELS.

**1761.** The *general principles* governing in such cases are—that the only *identity* of the subject of the insurance contemplated by a time policy upon a stock of goods in a store is that it should be a stock of the same kind of goods owned by the insured in that store; that the removal of one stock by the insured, and replacing it by another of the same kind, does not change the subject of insurance within the meaning of the policy," the insurance being upon merchandise which was to be used for traffic, and not as property to be kept unchanged.

*F. I. Co. v. Anapow*, 45 Ill. 86, 45 Ill. 482; *Walton v. Ins. Co.*, 2 Rob. La. 563; *Schumitsch v. Ins. Co.*, S. C. Wis. 9 *Ins. Law Jour.* 56, 66; *Vose v. Hamilton Ins. Co.*, 39 Barb. N. Y. 302; *Flanders Fire Ins. Co.*, 1st Ed., 434, and authorities cited; *Ins. Co. v. Mack*, 45 Ill. 482.

**1762.** An assignment by the insured, with the consent of the insurer, of a policy on household goods of any description, family wearing apparel, or a stock of goods, constitutes a new contract, which covers the assignee's property specified in the policy and contained upon the premises named, though the specified property covered by the policy to the assignor was removed and that of the assignee substituted; this transfer of the policy covers his property as effectually as if it were the identical property contained on the premises when the policy was written.

*Wilson v. Hill*, 3 Met. Mass. 66; *Rollins v. Ins. Co.*, 25 N. H. 227; *Folsom v. Ins. Co.*, 30 N. H. 240; *Fogg v. Ins. Co.*, 10 Cush. Mass. 337; *Cummings v. Cheshire Ins. Co.*, 55 N. H. 4 *Ins. Law Jour.* 932; *Sheffman v. West. Ins. Co.*, S. C. O. 1 *Philips Ins.* 252; 12 *Me.* 44; 34 *Id.* 427; 7 *La. Ann.* 244; 2 *McMullen S. C.* 220; 17 *N. Y.* 161, 424.

"Diminution of stock by 'daily sales' coincides with a diminution of the right to claim for loss, hence relatively there is no change in the situation." (*Quarrier v. Ins. Cos.*, S. C. W. Va., 6 *Ins. Law Jour.* 672.)

**1763.** A policy upon a stock of goods, which is being constantly sold and replenished, covers as well new purchases as stock on hand at date of the policy. But, in order that goods subsequently purchased shall become part of the stock in trade covered by the insurance, it is not enough that other goods are purchased, but it must appear that they became a part of the stock from which sales were to be made, as from the general stock of which the new purchases became a part. (Authorities *supra*.)

**1764.** When a trader is described by his *trade*, and his *stock in trade* is covered in general terms, his policy will not cover stock of another description, should he, after the date of his policy, choose to add another trade to his business. (**1269.**) (*Howard v. Williams*, 19 Mass. 80; *Ritchie v. McCuskey*, 4 Penn. St. 472.)

The question as to the *identity of goods* insured by one policy with those insured by another policy is held, in South Carolina, to be for the jury. (2 *McMullen*, S. C. 220.)

## TENANTS IN COMMON.

**1765.** In an old English case, action was brought by various consignees of certain cotton against the underwriters for a total loss. The ship was wrecked, and a part of the cotton lost. The rest arrived more or less damaged. On a large number of bales the marks had become so obliterated that it was impossible to say that any particular bale belonged to any particular consignee. The underwriters treated the cotton which arrived as a *partial loss* only; the consignees contended that the shipowner could not deliver to each the identical bales insured, and as he was prevented from so doing by the "peril of the sea," it was a *total loss*.

The court held that where the mixture is accidental, owners become *tenants in common* in proportion to their respective interests, consequently the consignees of the cotton on which the marks had become obliterated could not set up a *total loss*. They must recover insurance as such owners or *tenants in common*.

Spencer v. Union Mut. Ins. Co., citing Jones v. Moore, 4 Y. & C. 351; Buckley v. Gross, 11 W. R. 464; 3 B. & Sm. 575; Emerigon, Meredith's Ed., 245-6.

**1766.** At the burning of a warehouse in London, in which 3,636 bales of wool, valued at £70,339, were stored, some insured and some not, and for which there were seventy-three claimants, either as owners, factors, or agents. After the fire some 731 bales were identified by the owners by the marks, and removed: the balance of the salvage was, by common consent, sold, and the proceeds divided *pro rata* among the claimants, whether insured or not, as *tenants in common*. (Authorities *supra*.)

## BUILDINGS.

**1767.** As the insured may, under certain contingencies incur additional risks by alterations and additions to a building under insurance, it might occur that *identity* might not be destroyed, yet the quality, condition, and incidents of the building might be so changed as to increase tenfold the chances

of loss, which, upon a just calculation, might reasonably be expected to fall upon the underwriters. (IIII.)

In deciding upon the effect of any alteration in the premises, whereby the description may be rendered incorrect, it is material to consider, not only whether the description amounts to a warranty, but also the effect of the stipulations of the policy as to alterations.

### MISCONDUCT.

**1768.** *Condition of the policy.*—"Nor in consequence of any neglect or deviation from the laws or regulations of police, where such exist."

MISCONDUCT, as applied to insurance contracts, means a transgression of some *established* and *definite* rule of action, where no discretion is left, except that which necessity may demand.

*Waters v. Ins. Co.*, U. S. S. C., 1 Benn. F. J. Cases 614; *Ins. Co. v. Lawrence*, 10 Peters U. S. S. C. 517, 518.

**1769.** *Carelessness, negligence, and unskillfulness*, are transgressions of some *established* but *indefinite* rule of action, where some discretion is necessarily left to the actor.

Questions of *misconduct* are questions of law, and are for the courts.

Questions of *care, diligence, and skill* are questions of fact, to be decided by a jury; except where the law defines the very act to be done under given circumstances; in such cases the jury have only to decide whether the acts required or forbidden by the law have been done.

*Emerigon Ins.*, Meredith's Ed. 290; *Bunyon Fire Ins.*, 2d Ed. 201; *Huckin v. Ins. Co.*, 11 Foster N. H. 238; *St. John v. Ins. Co.*, 1 Duer N. Y. 371; *Hynds v. Ins. Co.*, 16 Barb. 119; *Gates v. Ins. Co.*, 1 Seld. 469; *Catlin v. Ins. Co.*, 1 Sumner U. S. C. C. 434; *Mathews v. Ins. Co.*, 13 Barb. N. Y. 234; 1 *Philips Ins.*, § 1096. and authorities cited.

Though a policy of *insurance* may protect against losses through mere *negligence* and *carelessness*, yet it will not protect against *gross misconduct* of the insured. And, if loss result therefrom, the owner of the property insured must bear the loss. (*Chandler v. Ins. Co.*, S. C. Mass., 3 Cush. 328.)

*Witcher v. Ins. Co.*, 18 Pick. Mass. 421; *Ins. Co. v. Lawrence*, 2 Peters U. S. 43; *Billings v. Ins. Co.*, 20 Conn. 130; *Nelson v. Mackintosh*, 1 Stark. 237; *Waters v. Ins. Co.*, 1 McLean C. C. 275; 1 Benn. F. L. Cases 614; *Mickey v. Ins. Co.*, 8 C. Iowa, 2 Ins. Law Jour. 15.

Where the insured, master of a river steamboat, caused a barrel of turpentine to be brought from the hold to the furnace, and used it to increase the head of steam, whereby the vessel was set on fire and destroyed, he could not recover the insurance; for under an act of Congress, turpentine must be secured upon steamboats in metallic safes, or in apartments lined with metal, at a secure distance from any fire, and, therefore, in using the turpentine the master violated a clear and *definite* rule of duty, which would subject him to whatever loss resulted therefrom.

When the *proximate* cause of the loss is one of the perils insured against, as fire, in a policy against fire, although the *remote* cause was the *negligence* or *mismanagement* of the insured, his agents or servants, the underwriters are liable, if there be no fraud.

# NEGLIGENCE.

**1770.** It being one of the primary objects of insurance against fire to protect owners of property from the *carelessness* of servants and agents, it is obvious that losses occurring from mere fault or *negligence*, even of himself, not amounting to fraud or design, are within the policy, and recoverable from the insurer.

NEGLIGENCE of the insured may be so gross and culpable, however, that the law will *presume* fraud, and the insurer will be discharged, though there be no positive proof of an actual design on the part of the insured to burn the property.

Wherever the acts done, or neglected to be done, are of such character as tend to show design or fraud, they are clearly admissible in defense to an action on the policy. (728.)

*Lyon v. Mills*, 5 East. 426; *Ripon v. Cope*, 1 Camp. 434, 2 Arnould Ins. 767; *Jameson v. Royal Ins. Co.*, 7 Ir. R. C. L. 126, Q. B.; *Foy v. Aetna Ins. Co.*, 3 Allen N. B. 36.

There is no remedy under the law, at present, for *carelessness*; but *gross negligence* on the part of a party to whom money was payable in case of loss is presumptive of fraud; and if established by strong proof, would prevent recovery under the policy. (1769.) (1 Sumner U. S. 434; Angell Ins. 174, 175.)

The Supreme Court of Massachusetts are of opinion that underwriters are not liable for loss by fire occasioned by the *extreme, reckless, and inexcusable negligence* of the insured, the consequence of which would have been palpably obvious to him. (Chandler v. Ins. Co., 3 Benn. F. L. Cases 20.)

When *gross negligence* is charged as a defense, the burden of proof is upon the underwriters, and should be of the most positive character as to the *negligence*. (1679.) (3 Cush. Mass. 328.)

#### THEFT.

**1771.** *Condition of the policy.*—"Nor for loss by theft at or after a fire."

The stipulation ignoring liability for *theft* is not found as a condition of the policy earlier than about A. D. 1860.

**1772.** The *general principles* of the law of *theft* at and after a fire, where the policy is silent upon the subject, are as follows:—

"That loss by plunder of goods removed away from a fire, and so put out of the control of the insured, is treated in common practice as *directly incidental or consequent* to the fire, and covered by the policy." (1662, 1737.)

1 Parsons Ins. 562, n. 2; 2 Arnould Ins. 817; Weskett Ins. 543; 1 Philips Ins. 363, n. 3; May Ins., § 404.

#### WHERE THE POLICY IS SILENT.

**1773.** Insurers are liable for loss of goods stolen *during* the fire, *there being no exceptions in the policy against theft*. (1737.)

**1774.** The liability of insurers for loss by *theft* is not restricted to the precise period when the fire was extinguished; the precise time when the *theft* occurs is not important, if it be occasioned directly by the fire.

**1775.** Insurers are liable for loss by *theft* consequent upon the careful removal of insured goods by the insurance watch from a burning building, wherein they must have otherwise been burned, it being "a loss or damage by fire."

*Agnew v. Ins. Co.*, 3 Phila. R. 193; 34 Penn. St. 96, reversing the foregoing *infra*; *Whitehurst v. Fayetteville Mut. Ins. Co.*, 6 Jones Law N. U. 352; *Stanley v. Western Ins. Co.*, 3 L. R., 9 Exch., 71; *Thompson v. Montreal Ins. Co.*, 6 U. C. Q. B. 319; *Lewis v. Springfield F. & M. I. Co.*, 10 Gray Mass. 159; *Witherell v. Maine Ins. Co.*, 49 Me. 200; *Tilton v. Hamilton Fire Ins. Co.*, 1 Bosw. N. Y. 377; qualified by 14 Howard, N. Y. C. A., 363, *infra*; *McGibbon v. Queen Ins. Co.*, 10 L. C. J. 227; *Newmark v. L. & L. & G. Ins. Co.*, 30 Mo. 100; *Magoun v. Ins. Co.*, 1 Story U. S. C. C. 137.

**1776.** Where the policy made it the duty of the insured "to use his best endeavors for saving and preserving the property"—

Held: "That goods lost or *stolen* in the course of removal (in accordance with the provisions of the policy) from a building actually on fire was a loss within the terms of the policy." (1737.)

*Fernandez v. Ins. Co.*, 17 La. Ann. 181; *Webb v. Ins. Co.*, 14 Mo. 3.

#### LIABILITY UNDER THE CLAUSE.

**1777.** On the other hand, where a policy provided *against liability for loss by theft*, and also required the insured to "use all diligence in removal and preservation of the property," under penalty of voiding the policy, in case of failure so to do. (1680.)

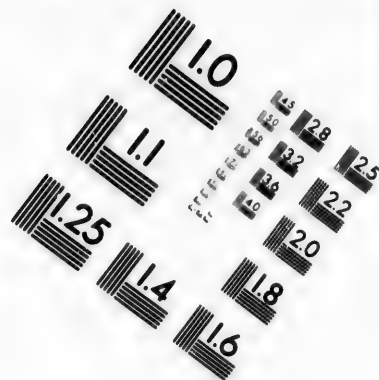
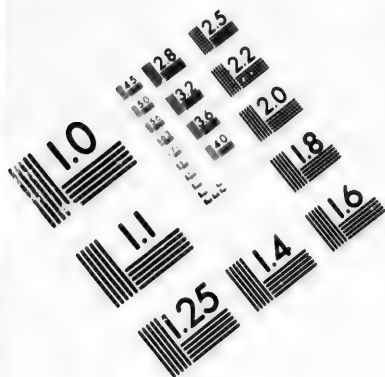
*Tilton v. Hamilton F. I. Co.*, 14 How. N. Y. 363, reversing 1 Bosw. N. Y. 367, *supra*; *Ins. Co. v. Agnew*, 34 Penn. St. 96, reversing *Agnew v. Ins. Co.*, *supra*; *Talamon v. Ins. Cos.*, 10 La. Ann. 426; *Harris v. Lond. & Lanc. Ins. Co.*, 10 L. C. J. 268.

Held: "That the clause protecting the insurers against loss by *theft* was independent of the one following, and the insured could not recover for loss by *theft*, although occasioned by the removal of the goods in compliance with such last clause." (*Webb v. Protection Ins. Co.*, 14 Mo. 3.)

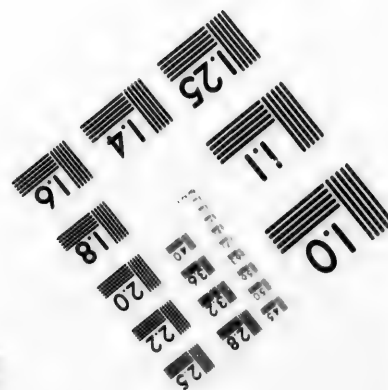
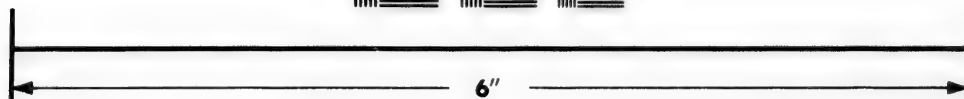
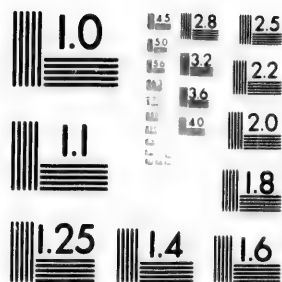
1 Philips Ins. 635, n. 3; 1 Parsons Ins. 532 n.

**1778.** The following condition is found in some policies:—

"If claim be made for loss of property *stolen* at a fire, the statement of such loss shall in all cases contain a specific description and valuation of each article *stolen*, accompanied by the affidavit of the claimant or claimants



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that the property so identified was *stolen* at the time and in consequence of such fire; nor shall the company be liable for any loss for property *stolen*, except such as shall be so identified, valued and verified."

It would be difficult at any time to tell just what portions of the missing property were stolen and what burned, under the above stipulation.

### SALVAGE.

**1779.** *Salvage* is that portion, either large or small, of the subject of insurance, saved from or remaining after the fire, in a sound or damaged condition.

As there is no transfer of the *salvage* property to the insurers under the fire policy, as in *abandonment* in marine insurance, except by agreement, it remains the property of the insured; and after appraisement and inventory is estimated at its value as *sound* in diminution of the amount of loss. (1817.)

9 Metc. Mass. 205; 11 *id.* 195; 3 Cush. Mass. 267.

**1780.** In mortgagee insurance, under the operation of the *subrogation* clause, the salvage reverts to the insurers on payment of the loss. (1821.)

Under the English *average policy*, the salvage is divided pro rata between insurers and insured, as in marine practice, a practice not recognized in this country. (1689.)

Under a marine policy in cases of total loss under full insurance after abandonment, the *salvage* reverts to the underwriters upon payment of a total loss. In cases of partial loss, the *salvage* belongs to the insured, but is estimated at cash value in diminution of the loss claim.

Weskett Ins. 501; 2 Arnould Ins. 844; Bunyon Ins. 115; Abbott Ship., pt. iv., ch. 15, 6 ed.

**1781.** The term *salvage* is frequently used in reference to the difference between the amount of the policy and the amount paid for the loss, though the term was first used to represent the expenses paid to salvors only.

**1782.** In estimating premium rates upon the various classes of hazards, especial reference is always made to the greater or less chances for *salvage* upon the articles covered in case of

loss (1532) ; hence in settlement of loss claims attention should be paid to the proper preservation and care of the *salvage*, in the interest of the insurers. (1596.)

## APPRAISAL OF DAMAGED GOODS.

**1783.** *Condition of the policy.*—“ When personal property is damaged the assured shall forthwith cause it to be put in order, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged, and shall cause an inventory to be made, and furnished to the company of the whole, naming the quantity, quality, and cost of each article.”

**1784.** In case of loss on stocks of goods by fire, where the amount of damage claimed may render a formal appraisal necessary or desirable, the stock should be put in as good order and condition, as possible by *the claimant*; or, in case of his refusal or neglect, by the local agent, or some competent person employed by him (*acting for and on account of whom it may concern*), without unnecessary delay, by handling, spreading, drying, re-folding and re-arranging: for which purpose such local agent or adjuster is entitled to free access to any property covered by policies of any companies he may represent, under which claims for loss or damage may have been made. Should the claimant object to, or in any way obstruct the access of the agent to such property, for such declared purpose, he will do so at his own peril. The agent should at once advise his company of the facts and await instructions. (1574.)

**1785.** The refusal of the insured to let the underwriters examine articles alleged to be damaged, so that they may replace them with others according to a provision of the policy if they so elect, is a ground from which the jury may make an inference as to the claim for loss being fraudulent. (1575.)

**1786.** The nature of the insurance contract gives the right to enter for the purpose of ascertaining the damage, and, when necessary, to retain possession for a *reasonable* time. A *forcible* entry is not justifiable, however. (Bunyon Ins., 2nd Ed., 121.)

**1787.** All of the stock should be assorted, counted, weighed, or measured, as the case may require, and the *sound portion* only duly invoiced at the actual *cash value*. All that may be damaged should be selected ready for submission to appraisers, and entered upon the appraiser's blanks usually furnished by the company.

**1788.** When damage to the stock is but partial, and few or none of the goods are totally destroyed, it will be only necessary to take the *damaged stock* into consideration.

**1789.** *Goods damaged by removal only* should be entered and appraised separately as required by the policy. (1680.)

**1790.** *Goods "held in trust," or "on commission," or "sold but not delivered,"* or for which the insured may be liable, should be kept by themselves and accounted for separately. Such as the claimant does not own, yet may be liable for, or which may be covered by his policy, should be inventoried and appraised by themselves in the same manner as the other property. (1199.)

**1791.** *Stereotype plates, drawings upon lithographic stones, steel and copper plates and wood-cuts; photographic negatives,* and other similar productions of art, may or may not be valuable at the time of loss. Thus, *stereotype plates* may be of books which have proved a bad investment and not worth reprinting; or they may have become so badly worn by use that their *actual value* is simply as old type-metal. Publishers estimate the deterioration of such plates at from *ten to twenty or thirty per cent.* for each edition, according to age and the number printed. With *lithographic drawings*, after a certain number of impressions, the value is only in the stone; and that becomes less valuable by weight, as it decreases in thickness, having no value when it becomes too thin to bear the pressure of the press. The same general rule holds good for steel and copper plates and wood-cuts. Negatives, especially, should be valued as plain glass only, except when covered by the policy specially under a schedule. (2179.)

**1792.** When damage is slight only to property, real or personal, it can often be settled without the necessity of formal appraisement or proofs. Agents will serve their companies by making such settlements, when the insured may be disposed to act fairly and honorably in the premises, without the intervention of appraisers, by whom, even with the best intentions, small losses are almost invariably largely augmented.

*Especial effort should be made to assort the items of loss and enter them up in a manner to correspond, as nearly as may be, with the several divisions of the policies.* This will save much time and trouble and avoid disputes in the final adjustment. (1807.)

## MACHINERY.

### FIXED AND MOVABLE.

**1793.** In the appraisement of mill property, such as *machinery, engine, boilers, fixtures*, and the like, the estimate for ordinary depreciation ranges from *ten* to *fifteen* per cent, annually, from use alone; the more aged the more rapid the depreciation. Due and adequate allowance should likewise be made for age and condition. The option to *reinstate machinery* when destroyed, is a reservation for the benefit of the underwriters; they may adopt it or not. But, in cases of reinstatement, the *money difference* between new and improved, and old, depreciated and superseded machinery should be distinctly borne in mind, as it is *indemnity* only that is guaranteed by the policy, not *gain* to the insured. The intrinsic marketable worth at the time of the damage is the only rule for estimating the value. (1835.)

Vance v. York & Lond. Assur. Co., 2 C. & D. 118, 2 Benn. F. Ins. Cases 68; Brinley v. Ins., 11 Metc. Mass. 195; Hoffman v. Ins. Co., 1 La. Ann. 216; Buchanan v. Ins. Co., 4 Ins. Law Jour. 462.

**1794.** Great diversity of opinion prevails among underwriters as to what constitutes "*machinery*," and its subdivisions "*fixed*" and "*movable*," as commonly written in the policy. The following definitions will aid in solving this problem, and enable the adjuster to act wittingly in his discriminations in cases of loss.

**1795.** A *machine* may be described as a structure more or less complex; having divers parts combined, for the purpose of modifying force, weight, and motion, more complex than a mere tool or implement. As treated by the patent laws, the term "*machine*" includes every mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result.

*Machinery*, in its strict acceptation, signifies any combination or modification of the well-known mechanical powers which may possess the requisites of *force*, *motion*, or *weight*, either separately or combined. It may be either *fixed* or *movable*. It is usually operated by power, as distinguished from manual operations.

15 How U. S. 267; 17 Johns. N. Y. 116, 124; 9 Conn. 63, 67; 11 Vt. 433; 20 Wend. N. Y. 636; 40 Mo. 91; 10 Barb. N. Y. 151; *Leibenstein v. Ins. Co.*, 45 Ill. 361, 305; *Franklin F. I. Co. v. Brock*, 57 Penn. St. 74; 4 Ins. Law Jour. 457; *Seavery v. Ins. Co.*, 111 Me. 540; 3 Ins. Law Jour. 576; *Pierce v. George*, 108 Mass. 78.

**1796.** FIXED MACHINERY includes engines, machinery and main or line shafting, such as is ordinarily *fastened to the building*, and would naturally pass with the realty under a mortgage or sale, though counter-shafting, pulleys and hangers are not usually considered as *fixed* machinery.

3 East. 55; 2 *id.* 215; 2 Kent. Comm. 430; 7 Black. Ind. 460; 3 Mason U. S. C. C. 347.

**1797.** MOVABLE MACHINERY includes all such as may be readily moved, as looms, lathes, and single machines generally; and in some sections all counter-shafting, with the pulleys and hangers.

*Winslow v. Ins. Co.*, 4 Met. Mass. 306, 1 Ohio St. N. S. 511; 4 Allen Mass. 114, 116; 14 *id.* 136, 138; 61 N. Y. 26; *Buchanan v. Ins. Co.*, N. Y. C. A., 61 N. Y. 26, 4 Ins. Law Jour. 457.

**1798.** TOOLS, IMPLEMENTS AND UTENSILS are instruments used in the *manual* arts, to facilitate labor, as distinguished from *machinery*, which is operated by power. Interchangeable DIES, as in tin-cutting machines, are parts of the machine with which they are to be used, and are included in the policy covering the machine.

**1799.** STEAM-ENGINE, BOILER, AND THEIR "CONNECTIONS," are held by usage to embrace the engine complete, including

feed-pump, heater, escape-pipe, fly-wheel, and band-wheel (*but not band*), the boiler, grate-bars, bearers, steam-pipe to engine, blow-pipe, feed-pipe, and check-valve, gauge-cock, water-gauge, safety-valve and stop-valve; in short, all such pipes, cocks, and valves as are necessary for the working of the engine up to the first *motion*-wheel.

**1800.** "FIXTURES," "FITTINGS," "APPURTENANCES," as applied to *engine and boiler*, are equivalent to *connections* as already explained. As written in many policies, they are about equivalent to "*et cetera*," and quite as definite. If used in the policy, they should be restricted to the machinery to which such "*fixtures*," etc., directly appertain, as "steam-heating apparatus and *fixtures*."

"SHAFTING" necessarily includes the *couplings*; and would doubtless be held to cover the *pulleys* and *hangers*, where not expressed, but would not include the *belting*, which is always covered specifically, except when forming a component part of a machine.

**1801.** "MILL SUPPLIES:" This term differs from "*stock supplies*," with which it is not unfrequently confounded, in that it includes only such materials for substitution and repairs as may be requisite in maintaining the mill in running order; while "*stock supplies*" cover only articles needful in the operation of the mill or working materials. (**2288.**)

**1802.** FOUNDRY PATTERNS, or models in metal or wood, for reproduction of parts of machinery or other objects. They are also, sometimes, called "*Templets*," which is more correctly applied to a mold used by bricklayers and masons, by which their work is cut, also by millwrights, for a pattern to cut teeth by. They are treated in adjustments as of two kinds: *those in daily use*, such as stove-patterns, or of machinery manufactured for sale—and those made for *special occasions* only, and afterwards laid aside until a chance job may bring them, or a portion of them, into requisition.

The *first-named*—those in daily use—have an actual permanent value. The *last-named* are not so valuable, as they have already been paid for. They should be covered, if at all, only

at a large reduction from cost. Parties using patterns extensively are apt to value them at high figures when claiming for losses upon them. They should be duly scheduled when written upon, as after loss their value would be difficult to ascertain; they suffer materially from wetting or damping when made of wood, by swelling, starting of the glue, thus destroying their exactness beyond restoration.

*Lovewell v. Ins. Co., S. J. C. Mass., 1878, 7 Ins. Law Jour. 672.*

### APPRAISERS.

**1803.** *Condition of the Policy.*—"The amount of sound value and of damage shall then be ascertained by appraisal of each article by competent persons (not interested in the loss as creditors or otherwise, nor related to the assured or sufferer), to be mutually appointed by the assured and the company; their report, in writing, to be made under oath before any magistrate or other properly commissioned person; one half of the appraiser's fees to be paid by the assured."

**1804.** The general principles of law relative to appraisal are the same as for arbitration (q, v), of which this is one form. (**1810.**) Appraisals are not final as they are held to "oust" the Courts from their jurisdiction.

*Zales v. Ins. Co., 44 Mo. 530; Scott v. Phoenix Ins. Co., 1 Stuart L. C. 152.*

Much difficulty between the insured and adjusters has been caused by the ignorance of *appraisers* as to the *specific* duty they were selected to perform; hence, they should be furnished with an inventory of the property submitted to them for appraisal, and made to comprehend that their duty is *confined solely to an estimate of damages* upon such property, any other question touching the claim for loss is the province of the adjuster, or matter of reference to the company.

**1805.** Appraisers are usually chosen from parties having no pecuniary or other interests at stake, nor in any way related to the insured—one by the insured, the other by the company, through its agent or adjuster; and in case of failure to agree, the two so chosen select a third as umpire or "oversman." They are all sworn to the impartial performance of their duty; and are paid by the insured and company equally. They should be practical business men; of good moral repute, and well

acquainted with the current values of the articles submitted to them; and as their *appraisement is intended to be final as to the measure of damage* to the property appraised, they are expected to discharge their duties in a conscientious and impartial manner. They may ascertain the damage in any way they think proper.

*De Groot v. Ins. Co.*, 4 Rob. N. Y. 504; *Brink v. Ins. Co.*, 5 id. 104; *Uhrig v. Ins. Co.*, N. Y. C. A., 15 Ins. Law Jour. 312; *Reed v. Washington F. I. Co.*, S. J. C. Mass., 1884.

Much depends upon the proper selection of an *appraiser* on behalf of the company, and no pains should be spared to procure the best talent available. The insured, being in the midst of friends, will have no difficulty in selecting a person to suit his own views. The interest of the company will require corresponding care on the part of the agent.

**1806.** The appraisement of damage, to be satisfactory, should be in detail; that is, upon each separate article, when single or by the dozen, yard, gallon, or bushel, as the case may be, in form, as per *Schedule A*, of appraiser's blanks. All estimates by the lump, or in gross, or by percentage, should be ignored. (*De Groot v. Ins. Co.*, *supra*.)

1 Magens' Essays 35, § 34.

**1807.** Especial pains should be taken by *appraisers*—and agents should impress upon them the necessity—of so arranging the appraised articles as to have them correspond, as nearly as may be, if not exactly, with the several items of insurance as specified in the policy; avoiding all mixing up of articles which have been separately covered. The labor and *bad temper* saved to the adjuster in the subsequent settlement of the loss are known and appreciated only by those who have been compelled to wade through and dissect a mixed appraisement to make it correspond with the figures of the insurance. An especial illustration of this *bad practice* will be found in *Statement XLI*. (2313), while a notable example of the contrary style will be found in *Statement XXXVIII*. (2288.)

**1808.** The adjuster or agent should endeavor to prevent any unfair or fraudulent act on the part of the claimant or his

appraiser, or carelessness on the part of the company's appraiser, should such occur, as has frequently been the case heretofore and will be frequently hereafter, until human nature changes.

Where persistent effort is made by the insured, or his chosen appraiser, to under-estimate his damaged stock, for the purpose of enlarging his loss claim, the agent or adjuster should at once take such goods at the appraisal for the benefit of the company.

**1809.** The following decision embraces several important points connected with the selection of appraisers.

A loss occurring, H., an agent of the insuring company, requested one F. (not the insured) to select some persons to make the appraisal for each party; whereupon R. and P. were selected; and thereupon H. (the agent) with R. and P. made an estimate in writing of such loss, which was signed by H. and P. only; all without the sanction of S. the insured:—

**Held:** "This was not an award under the policy, the proof showing that such arbitrators were not selected by the parties; that they were not 'disinterested,' as H. was the agent of the company, and that P. was not 'competent,' he being a 'drinking fellow' of 'no account.' The pretended award was signed only by H. and P., and that being signed by an 'interested' party robbed it of all vitality. Nor would a tender of the sum thus estimated to be due to S., the insured, amount to an *accord and satisfaction*, there being no proof that S. agreed to such proceeding." (Davis *et al.* v. West. Mass. Ins. Co., 8 R. I. 277.)

## ARBITRATION.

**1810.** *Condition of the policy.*—"But provided in case differences shall arise touching any loss or damage, after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial arbitrators, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy." (748.)

2 Valin Comm. 44, 154; Weskett Ins. 21; 1 Duer Ins. 91; Emerigon Ins. 278; 1 Philips Ins. 35, § 58; Boston W. P. Co. v. Gray, 6 Metc. Mass. 131. Ward v. Merch. Bank, 7 Metc. Mass. 48.

**1811.** The conditions of all policies provide for the reference of matters of disagreement in the adjustment of loss, at the option of either party, to *arbitrators*, disinterested persons,

amicable compounders, who are usually chosen by each party, and those thus selected choose an umpire or "oversman." The Boston form of policy provides for the selection of arbitrators in the following peculiar manner: one to be chosen by each party out of three to be named by the other party, and the third by the two so chosen.

The effect of this stipulation is to reduce the policy from a contract to pay the amount of damage *absolutely*, to one to pay such sum as the amount of damage ascertained by a third party, substituting the arbitrators for the jury. Hence, it has been held invalid because it is an attempt to oust the courts of jurisdiction by excluding the insured from all resort to them for his remedy.

*Nutt v. Ins. Co.*, 6 Gray Mass. 174; *Cobb v. Ins. Co.*, *id.* 492; *Hobbs v. Ins. Co.*, 56 Me. 421; *Stephenson v. Ins. Co.*, 54 Me. 70; *Scott v. Avery*, 5 Ho. Lords Cases 817; *Ketchum v. Ins. Co.*, 1 Allen N. B., 2 Benn. F. I. Cases 739; *Earl of Meyborough v. Bower*, 7 Beav. 152; *Thompson v. Montreal Ins. Co.*, 6 U. C. Q. B. 319; 3 Benn. F. I. Cases 23; *May Ins.* 594.

**1812.** Parties may make it a condition precedent to bringing an action, that the *amount, time of payment, or any other matter which does not go to the root of the action*, shall be settled by arbitration. The insured may, nevertheless, bring suit for loss without offering such reference.

*Scott v. Ins. Co.*, 1 Stuart L. C. Ap. 152, 1 Benn. F. I. Cases 118; *Goldstone et al. v. Osborn*, 2 Carr. & Payne 550, 1 Benn. F. I. Cases 129.

The remedy at law for the breach of this condition, however, would be very precarious, for it would be difficult for a jury to estimate damages occasioned to one party by the refusal of the other to substitute an arbitration for the ordinary legal tribunals.

**1813.** Where the payment of a claim is contested by the insurer without first seeking to avail himself of the right given by the condition or agreement to refer to arbitrators, he will be considered as having waived such right to refer.

*Hills v. Hollister*, 1 Wilson 129; *Ins. Co. v. Steiger*, S. C. Ill., 13 Ins. Law Jour. 46; *Mooney v. Ins. Co.*, S. C. Mich., 1886; *Wright v. Ins. Co.*, Penn. S. C. 1885; *Mentz v. Ins. Co.*, 29 P. F. S. Pa. 478; *Farnivalle v. Combes*, 5 Mann. & G. 736; *Ins. Co. v. Morse*, 20 Wall. U. S. 445.

**1814.** *An agreement to refer to arbitrators, without such reference, cannot oust the court; but if there shall have been any such reference, or any such was pending, it might be a bar.*

*Thompson v. Charnock*, 8 Term R. 139; *Street v. Ripley*, 6 Ves. 875; *Mitchell v. Harris*, 2 Ves. 129; 1 Benu. F. I. Cases 118, and the extended notes and authorities there appended.

**1815.** While the courts cannot be ousted of their jurisdiction by any reference to arbitration, neither can they compel parties to submit to a reference during the progress of a suit, when one of the parties has declined to submit to such arbitration.

*Roper v. London*, 1 Ell. & Ell., Q. B. 825.

An award of *arbitrators*, under a submission and payment of the amount awarded, will be binding in respect to a claim for loss, as in case of other claims; and the courts will lend their authority to the enforcement of an *award* once duly made by referees duly appointed.

*Schollenberger v. Ins. Co.*, U. S. C. C. Pa., 7 Ins. Law Jour. 697, 722; *Yeomans v. Ins. Co.*, U. S. C. C. N. J., 5 Ins. Law Jour. 858, and cases cited; *U. S. v. Robeson*, 9 Peters U. S. 319; *McInness v. West. Assur. Co.*, 30 U. C. Q. B. 580; *s. c.* 5 U. C. P. R. 242; 6 C. L. J., N. S., 292; *Ins. Co. v. Corbett*, 9 S. C. R. 73.

**1816.** It will be noted that the powers of the *arbitrators* are limited by this stipulation to the *amount of loss or damage only*. By the clause as contained in the early policies the powers of arbitrators were not thus limited, but the whole subject-matter of the claim was left open for their consideration; and they further decided as to how the expenses of arbitration should be paid, a point upon which the present condition is silent.

#### ABANDONMENT.

**1817.** *Condition of the policy.*—"There can be no abandonment to the company of the property insured."

2 Magens' Essays, §§ 1416, 1418; 2 Valin Comm. 108, 117, 143; Emerigon Ins. xxii, n.; Le Guidon, Ch. 7, Art. 1; Weskett Ins. 1, 5; 2 Parsons Ins. 111; Marsh. Ins. 489; 2 Philips Ins. 225; 2 Arnould Ins. 990; Globe Ins. Co. v. Sherlock, S. C. Ohio, 4 Ins. Law Jour. 522.

**1818.** *Abandonment* of the remnants after a loss is an act at the option of the insured. Under the conditions of a marine policy, in case of "constructive total loss," he *may* relinquish and transfer to the underwriters his insurable interest, or the proceeds of it, or claims arising from it, so far as it may be covered by the policy and claim as for a total loss; but it is otherwise in fire insurance, and there can be no abandonment where the right of reinstatement exists as in the fire contract.

Civil Code L. U., § 2338, 2550; Clarke Ins. 323 *et seq.*, for Canadian cases.

The term "abandonment," though not used in fire policies, nevertheless the *principle* is applicable to them in the form of *subrogation*. (**1871.**) They differ from marine contracts in that the goods covered are under the immediate control of the insured; and, though in a more or less damaged condition, are still marketable at a proportionate price, to be ascertained by appraisement or by sale at auction, while marine salvage is remote, beyond the control of the insured.

**1819.** The terms of the fire insurance contract contemplate indemnity to the insured, and nothing more; they do not contemplate, in event of damage, the purchase of the stock by the insurer at its *value* on the day of the fire, as would be the case if *abandonment* were accepted. It is one thing to indemnify the insured for injury actually sustained, and quite another to be compelled to become the purchaser of a large amount of damaged merchandise. An English writer of note has said:—

"The attempt to convert insurance companies into speculators in produce, with all the disadvantage of forced sales and combined buyers, was surely never suggested, much less sanctioned, by any fair legal construction of the terms of the policy. In any case, it is a risk not contemplated by the assurers, and is one for which a fitting rate of premium has yet to be inquired for and found. If the policy is not only to take the risk of damage by fire, but also the chances of falling markets and forced sales, there must be quoted a presumably adequate rate of premium by those who are willing to embark in the experimental business. It is simply the insurance of merchandise from the risks of fire—*plus* the risks and riggings of markets."

**1820.** There being no *abandonment* of damaged property to the underwriter in fire insurance, it remains the property of the insured after, as before the fire, and is at his risk, to be

taken care of at his expense. It may be disposed of by him as soon as it has been satisfactorily invoiced and properly appraised.

On the other hand, the underwriter cannot compel the insured to hand the property over to him, except in cases of evident undervaluation in the appraisal, when the insurer is at liberty to take all or any of the stock at its appraised valuation.

Companies sometimes take the *damaged goods*, by agreement with the insured, and dispose of them at auction *for cash, for and on account of whom it may concern*, as being the most ready and equitable means of arriving at the *present value of the same*; but *sound goods* are never so taken, as the insurer has neither ownership nor interest in them beyond the ascertained value in the adjustment. (1707.)

#### SUBROGATION.

**1821.** In cases of loss to any property under insurance where the insured may at the same time have or hold any interest, claim, mortgage, or other securities as collateral; or where the insured, from the circumstances of the loss, may be vested at common law with rights of recovery from other parties, then the insurer is entitled to be *subrogated* to all such interest, claim, mortgage, or other securities or rights of recovery of the insured, to an amount equal to that paid for loss under the contract of insurance; and the insured cannot, by the execution of any release, after such *subrogation*, discharge any of the liabilities thus subrogated, which he holds, and can only recover upon, as the trustee of the insurers, to the extent of the claim thus subrogated. (763.)

2 Philips Ins. 282; Angell Ins. 118; *Etna Ins. Co. v. Tyler*, 16 Wend. N. Y. 385; *Gracie v. Ins. Co.*, 8 Johns N. Y. 246; *Robert v. Ins. Co.*, 17 Wend. N. Y. 631; 1 Benn. F. L. Cases 690; *May Ins.* 555, *et seq.*; *Fire Ins. Co. v. R. R. Co.*, 8 Green, N. J. (21 Chy.) 107; *Springfield F. & M. Ins. Co. v. Allen*, 43 N. Y. 389; *Lower Canada Civil Code*, § 2584.

**1822.** "It is on this principle that the doctrine of *abandonment*, in marine insurance, rests. (1817.) The insured, on receiving the full value of the property destroyed, abandons to the underwriters all rights, interest, or

claims which he may have in, to, and arising from it, and whatever proceeds from such claims is of the nature of *salvage*, and belongs to the insurer." (1655.)

**1823.** As a *general principle*, the payment of a loss, total or partial, vests in the underwriters an equitable right to the interest itself, its remnants and proceeds, and any claims arising out of such interest, or any part of it; or as indemnity for its injury or destruction by the perils insured against. But the basis of the payment by third parties must be a *legal claim*, belonging to the insured against such party, which the law will enforce. A simple gratuity received by the insured, to compensate for his loss, or a payment to him under a mistaken supposition of an obligation to indemnify him, will not discharge or diminish the underwriter's liability. (735. 741.)

Fire Ins. Co. v. Boshier, 39 Me. 253; Conn. M. Life Ins. Co. v. R. R. Co., 25 Conn. 265; Anthony v. Slaid, 11 Metc. Mass. 290; Yates v. White, 33 E. C. L. 349; 4 Bing. N. C. 273; Quebec F. I. Co. v. St. Louis, 22 Eng. L. & Eq. 73; Hart v. W. R. Co., 13 Metc. Mass. 99; Quebec F. I. Co. v. Molson, 1 L. C. R. 222; Burton v. Gore Dist. M. Ins. Co., 12 Grant Chy. 170; Crawford v. Ins. Co., 18 U. C. Q. B. 135.

Held, in Missouri: "The underwriter cannot claim *subrogation* where payment was voluntarily made in a doubtful case."

**1824.** The equitable principle of *subrogation* cannot be applied where it conflicts with that indemnity to which the insured is entitled under the contract of insurance; but when *salvage* is diminished by the act of the insured, or any of his agents, for whose acts he is responsible, the underwriters are entitled to deduct the amount from the loss. Or where the insured has disabled himself from transferring claims against third parties consequent upon the loss, and liable to *subrogation* to the underwriters, a corresponding deduction should be made in the settlement of such loss.

May Ins. 555 *et seq.*; Foster *et al.* v. Reed, N. Y. C. A., 8 Ins. Law Jour. 201; Niagara F. Ins. Co. v. Fidelity Title and Trust Co., S. C. Pa., 18 Ins. Law Jour. 301.

**1825.** If the amount paid for loss under insurance does not equal the amount of the claims or securities thus liable to be *subrogated*, the insurer, by paying the whole amount of such claims or securities, will be entitled to the whole, and to all the rights insured therein and thereunder. This right

of subrogation does not accrue until payment, and full payment, of the liability which gives rise to such right on the part of the insurers claiming to be *subrogated*. On payment of a part only of that liability the right of *subrogation* does not intervene.

*People's Ins. Co. v. Strach's*, 2 Cincinnati S. O. Report 186; *Neptune Ins. Co. v. Doney*, 3 Md. Chy. 338; *Kyner v. Kyner*, 6 Watts. Pa. 221; *Ins. Co. v. Woodruff*, 2 Dutch. N. J. 541; *Phoenix Ins. Co. v. First Nat. Bank*, S. C. A. Va., 18 Ins. Law Jour. 362.

**1826.** The insured may collect for any loss from the insurer, before availing himself of the securities held or the rights of recovery against third parties; in which case the insurer becomes *subrogated* to all rights above recited, and can proceed to recover the amount paid, in the name of the insured, the same as the insured could have done, but at the expense of the insurer.

*Swartout v. R. R. Co.*, S. C. Wis., 9 Ins. Law Jour. 663; *Lond. Assur. Co. v. Sainsbury*, 3 Doug. 245; *Ryan v. R. R. Co.*, 35 N. Y. 210; *Hall v. R. R. Co.*, 13 Metc. Mass. 99; *Hall v. R. R. Co.*, 13 Wall. U. S. 367; *Gale v. Hailman*, 11 Penn. St. 516; *Harding v. Townshend*, 43 Vt. 536; *Quebec Ins. Co. v. St. Louis*, 7 Moore Priv. C. Cases 286; 1 L. C. R. 222.

**1827.** Or the insured may proceed to realize upon the securities, or sue upon his rights of recovery from other parties before making a claim upon the insurer; in which case such claim would be diminished by the amount received from the first-named sources. (*Wood v. Ins. Co.*, 1 Sickles, 46 N. Y. 421.)

Some policies have the following stipulations to meet such cases :—

"In case of loss the assured shall assign to this company all his rights to recover satisfaction therefor from any other person, town or other corporation, with a power of attorney to sue for and recover the same at the expense of this company. And if claim shall be made against this company, by the assignee or mortgagee holding this policy as collateral security, the same shall not be payable until payment of such portion of the debt shall have been enforced as can be collected out of the original security to which this policy may be held as collateral, and then this company shall only be liable to pay such sum, not exceeding the amount insured, as cannot be collected out of such primary security."

**1828.** In settlement of claims under the Act of March 3, 1849, for vessels lost in the military service of the United States, Comptroller BRODHEAD decided that the government was *subrogated* to the rights of the owners in respect to the insurance, and consequently only the value of the lost vessels, less the amount of insurance thereon, would be paid. The underwriters claimed that having paid the insurance they were *subrogated* to the rights of the owners, and therefore had a legal claim for reimbursement from the government.

The Comptroller held that the party receiving the premium ought to stand the risk, and that it would be a novel and unsound principle of law which would give an insurance company the premium, and impose the risk upon the United States. The Secretary of the Treasury sustained Comptroller BRODHEAD and refused payment of the claim.

#### UNDER TRANSPORT POLICIES.

**1829.** Where an action was brought to recover the value of cotton shipped by *railroad*, which was destroyed by fire in transit. The cotton was covered by insurance, and the companies had paid the loss claim. The court below held that the underwriters *could not be subrogated* to the rights of the shippers, and gave judgment for the owners.

The Supreme Court United States reversed the judgment and remanded the case, holding that the *carriers were responsible* to the underwriters who paid the loss, and that the latter may be *subrogated*. STRONG, J., delivered the opinion. (Hall *et al.* v. R. R. Cos., 13 Wall U. S. 367.)

Liv. and G. W. Steam Co. v. Phoenix Co., U. S. S. C., Mar., 1889, 18 Ins. Law Jour. 401; Inman v. S. C. Rway, U. S. S. C., Jan., 1889, 18 Ins. Law Jour. 268.

**1830.** It has been held, in Massachusetts, that the *general principles of subrogation* do not apply in *all* cases of mortgagee insurance; while other equally good legal authority recognizes no such distinctions. The weight of authority is with the latter.

**1831.** Chief Justice SHAW, in a lengthy argument:—

**HELD :** That when a mortgagee insures his interest in the property mortgaged, *at his own expense, without particularly describing the nature of his interest (i. e., generally),* he is entitled, in case of a loss by fire before the payment of his mortgage debt, to recover of the insurers the full amount of the loss (within the policy) *to his own use, without first assigning his mortgage, or any portion thereof to the insurer.*

This ruling was subsequently quoted and affirmed by Judge HOAR, of Massachusetts. (*King v. Ins. Co.*, 7 Cush. Mass. 116; *Ins. Co. v. Boyden*, 9 Allen Mass. 123.)

**1832.** Another similar ruling is as follows :—

Where U contracted to sell a house and lot to W, and afterwards took a policy on the house in his own name, and received part of the purchase money before insuring, and more before the loss :—

**HELD :** “As the insurance was upon the house, not expressed to be to cover a debt, and not including the lot, the company was not entitled to any cession of the lot, or of the claim against W. And as the house was totally consumed, there was nothing left to cede.”

**1833.** On the other side, and seemingly much better argued, Judge LAWRENCE, of the Supreme Court of Illinois, in the case of *Honore v. Lamar Ins. Co.*, 51 Ill. 409, said :—  
“Certainly it is much more consonant to every principle of equity to say that a debt may be recovered for the benefit of the insurance company, than that the mortgagee should be twice paid; *the doctrine of that case would sanction wager policies, and furnish a dangerous temptation to incendiarism.*”

**1834.** *Subrogation* is a strictly personal right of the original party, and if he cannot recover, neither can the party who claims through him. (*Alliance Mar. Ins. Co. v. La. State Ins. Co.*, 8 La. 1.) Such right may be assigned.

#### REINSTATEMENT.

**1835.** *Condition of the policy.*—“Provided further, that it shall be optional with the company to repair, rebuild or replace the property lost or damaged with other of like kind and quality within a reasonable time, giving notice of their intention so to do within thirty days after receipt of proofs herein required; and in case this company elect to rebuild, the assured shall, if required, furnish plans and specifications of the buildings destroyed.”

**1836.** *Reinstatement* of lost property has for its foundation the principle of indemnity, applying to all classes of property, real or chattel, but not to debts. (55 N. Y. 343.)

1 Magens' Essays 32, § 29; Sadlers Co. v. Badcock, 2 Atkinson 554.

All policies contain a stipulation giving the insurers the right to *reinstate* lost or damaged property, if they so elect, upon giving notice of such intention within a specified time after the receipt of the proof of loss. It is among the earliest stipulations incorporated in the fire policy. It is found in the *Hand-in-Hand* Company, A. D. 1696.

Franklin F. I. Co. v. Hamill, 3 M. 1. 170; Ellmaker v. Ins. Co., 5 Barr. Pa. 183; Sutherland v. Sun Fire Office, 14 Cases Ct. Sessions N. S. 775; Stinson v. Pincock, 14 Grant Chy. 604.

**1837.** The option to reinstate or replace property burned is a reservation for the benefit of the underwriter, and not one which he is compelled to adopt, as it does not always furnish the true rule for the damages which must be paid to indemnify the insured. This right to repair implies that the kind of loss for which the company was liable was one that could be compensated for, by rebuilding, reinstating or repairing. But insurers have no right to reinstate or rebuild, except through an express stipulation in the policy to that effect, and then only when the insurance is by the owner directly.

Gaston v. Wald, 19 U. C. Q. B. 586; Carver v. Ins. Co., N. Y. C. A., 15 Ins. Law Jour. 214; Stamps v. Ins. Co., S. C. N. C., 7 Ins. Law Jour. 256.

#### RE-BUILDING.

**1837a.** In case of reinstatement under the condition of the policy, the only question will be whether it be done properly and in due time. Consequential damages (**1736**) will not be considered.

Ins. Co. v. Johnson, S. C. Ill., 6 Ins. Law Jour. 434; Alleyn v. Quebec Ins. Co., 11 L. C. R. 394; Haskins v. Ins. Co., 5 Gray Mass. 432; Am. Cent. Ins. Co. v. McLanathan, 11 Kan. 533; Ins. Co. N. A. v. Hope, 58 Ill. 75.

**1838.** *Held*: That an election to *reinstate* once made, under a stipulation of the contract giving such privilege, it is the same as if no such right

of election existed, and the insurer is bound to do that which he has elected to do.

*Ins. Co. v. Delavan*, 8 Paige Chy. N. Y. 419, 2 Benn. F. I. Cases 20; *Wallace v. Ins. Co.*, S. C. La., 4 Louis. (W. B. Miller) 289, 1 Benn. F. I. Cases 412; *Sennett v. Ins. Co.*, 1 Wright Pa. 265; *Ins. Co. v. McGookey et al.*, S. C. O. Ohio, 8 *Ins. Law Jour.* 417; *Ins. Co. v. Garfield*, 80 Ill. 124, 1 *Ins. Law Jour.* 844; *May Ins.* 531, § 430.

**1839.** HELD: That the underwriters having elected to *reinstate* the building, in accordance with the terms of the policy, cannot be required to pay in any other manner; such election makes the insurance policy a building contract; and if they neglect to complete the building, the measure of damage is the amount required to finish it, without regard to that already expended.

**1839a.** Where a company, upon receipt of proofs, elected to rebuild, but did not do so on account of non-compliance of the insured with certain conditions of the policy:—

HELD: That when a company elects to rebuild, under the condition of the policy, such election makes the policy a building contract, whatever may be the cost, for which the company had received payment in advance. But, if from any cause the policy was voided, the election to rebuild was without consideration, and not binding, unless the promise to rebuild was by way of compromise to avoid litigation.

HELD, also: That if the insured refused to allow rebuilding on the *old plan*, and of the *same material* as the old building, the underwriter was released from his contract.

*Morrell v. Ins. Co.*, 33 N. Y. 429; *Beals v. Home Ins. Co.*, 36 N. Y. 532, s. c. 36 Barb. N. Y., 611; *Haskins v. Ins. Co.*, 5 Gray Mass. 432; *Ins. Co. v. Sennett*, 1 Wright Pa. 205; *Bank of N. S. Wales v. Royal Ins. Co. (Eng.)*, 1880; *Brown v. Royal Ins. Co.*, 1 Ell. & Ell. 853.

**1839b.** HELD: That, by electing to rebuild, the underwriters become responsible for miscalculations on their own part; for bad workmanship or failure of the builder; for casualties, or if, in rebuilding, the premises should from any cause become dangerous, and be ordered to be removed by the municipal authorities, even though such dangerous condition did not arise in consequence of the fire.

*Bunyon Ins.* 10; 33 N. Y. 429; 3 *Am. Law Reg. (N. S.)* 404; 1 Ell. & Ell. Q. B. 853.

**1839c.** If, after election to rebuild, the company do so in an improper manner, a court of equity will not interfere to compel them to do it as they ought, but will leave the insured to his suit at law for damages, as if he had contracted with any third person. (*Home Ins. Co. v. Thompson*, 1 U. C. Err. & App. 247.)

*Parker v. Eagle Ins. Co.*, 9 Gray Mass. 152; *Times Ins. Co. v. Hawke*, 5 Hurl. & N. Exch. 935.

**1840.** Where, immediately after a loss, the *insured* laid a new foundation and proceeded to erect a new brick building, the company within the exact number of days specified by the condition of the policy, gave written notice that they availed themselves of the option to rebuild, the insured refused to permit the insurers to rebuild, and continued the erection of the building himself:—

**Held:** That the insured could not maintain an action for damages for non-performance, when he himself refused permission to the company to erect a building in the mode provided by the contract.

*Elliott Savings Bank v. Ins. Co.*, S. J. C. Mass. Aprl, 1886; *Mosser et al. v. National F. I. Co. et al.*, U. S. C. C., N. Y., 1884; *N. Y. Ins. Co. v. Delavan*, 8 Paige Chy. 418; *May Ins.* 534, § 432

Where the burnt premises had been rebuilt by parties in interest, and the mortgagee sued the company for the insurance money:—

**Held:** "The contract of insurance is a contract of indemnity, and as the building has been restored, and the security of the plaintiff thereby made as valuable as before the fire, and this had been done before the commencement of the suit, he has sustained no loss or damage, and could not therefore recover."

*Mathewson v. West. Assur. Co.*, 10 L. C. S. C. M. R. 8; *Ins. Co. v. Royal*, 55 N. Y.; *Friedmandorf v. Ins. Co.*, U. S. C. C., Chicago.

## NEW FOR OLD.

**1841.** When a building is totally destroyed by fire, the cost of rebuilding does not furnish the true measure of damage. Under such ruling the amount recovered would exceed a fair indemnity. The insurer is only bound to reinstate the building, as nearly as possible, in the same condition as before the fire. The custom in marine insurance, of deducting one-third of the price of new as the value of old, in *repairs*, or as it is technically termed, "off one-third new for old," does not obtain in fire insurance. (**1843-4.**)

*Brinley v. National Ins. Co.*, 11 Metc. Mass. 195; 2 Benn. F. I. Cases 471 (and numerous authorities in Editor's annotation to the case); *Vance v. Foster*, 1 Irish C. Cases 5; *May Ins.* 532, § 431; 5 Hurl. & N. 935; 3 Stevens N. P. 2984; *May Ins.* 533.

**1842.** Professor GREENLEAF lays down a rule that the actual loss is "*the expense of restoring the property as it was before, without any deduction for difference in value between new and old materials.*" (2 Greenleaf, Ev., § 407.)

**1843.** The Supreme Court of Massachusetts say :—

"By the rule contended for (Greenleaf above), the insured would, in most cases, recover more than an indemnity; and much more when the building insured is dilapidated and much out of repair. Such rule is not supported by any principle of justice, nor by authority of any adjudged case. It is founded upon an erroneous construction of the contract. It supposes the insurers are bound to repair the building, or pay the expense of such repairs. But no such obligation is imposed upon them by the policy; they have the privilege to make the requisite repairs if they see fit, to protect themselves against the recovery of excessive damages, or for any other reason; but if they elect not to make the repairs, they are liable to pay only a fair indemnity for the loss." (11 Metc., Mass. 195.)

**1844.** The same authority, in reviewing a decision of a lower court upon a case of *reinstatement*, say :—

"The jury were instructed that no deduction was to be made for the expenses of repairing or rebuilding the store insured, although the new building might be more durable than the old one would have been, and for some purposes more valuable; *in this respect we think the jury were misdirected.*" (Brinley v. National Ins. Co., S. C. Mass., 11 Metc. 195.)

"The rule requiring a deduction of the difference between new and old should be applied in *all cases*, where the cost of repairs is one of the elements by which the jury are to estimate the actual loss, and seems to be founded on the principles of justice, as it will give the insured a full indemnity, and no more, to which he is entitled by the contract." (May Ins. 455.)

**1845.** Where the insured puts up a new and improved building in place of the old, the amount of the loss will not be determined by the cost of the new one; but will be the estimated expense of *restoring* the old one, without improvement or enlargement. If it were an old and dilapidated building at the time of the fire, the true measure of damage would be the value of the building destroyed, and not of the new one. But the estimated value must be that of such a building generally, and not subject to any contingent or incidental disadvantage, such as approaching expiration of leasehold interest, depreciation of property since the erection of the building, or other similar cause. (**1843.**)

*Brinley v. Nat. Ins. Co.*, 11 Metef. Mass. 196; 4 Benn. F. I. Cases 471; *Wood Fire Ins.*, § 130.

**1846.** Where, by the terms of the policy, in case of rebuilding, the insured has the right to examine the work by experts before acceptance, he can insist upon such examination, and need not accept the building otherwise, although he had made suggestions to the builder, and caused corrections to be made during the progress of the work. (*Alley v. Quebec F. I. Co.*, 11 L. C. R. 394.)

### FIRE LIMITS.

**1847.** A city ordinance forbidding such rebuilding, and a prohibition against rebuilding by the public authorities after a loss, are no defense for the underwriter. (**409.**)

*Brown v. Royal Ins. Co.*, 1 Ell. & Ell., 853; *Brady v. Ins. Co.*, 16 Mich. 425.

Where a frame building, located within designated fire limits, was worth \$4,000 before the fire, but without repairs was worth less than \$100, and could have been repaired for much less than the amount of insurance, \$2,000, but could not be rebuilt without consent of the Common Council, which consent was refused:—

HELD: That the company was liable for the whole sum at risk; the indemnity not being limited to such sum as would cover the cost of repairs.

*Brady v. Ins. Co.*, 11 Mich. 425; *Brown v. Royal Ins. Co.*, 1 Ell. & Ell., Q. B. 853; *Wharton Contr.* 623, and cases cited; *Fire Ass. v. Rosenthal*, S. C. Pa., 15 Ins. Law Jour. 658; *Village of Louisville v. Webster*, S. C. Ill., 1884; *Hamb. Brem. Ins. Co. v. Garlington*, S. C. Texas, 15 Ins. Law Jour. 509.

**1848.** Condition xiii. of the New Zealand Policy (**407**) provides:—

“That in case the company shall be unable to reinstate or repair the buildings, *because of any provisions of law* to the contrary, it shall be liable to pay only such sum as would be requisite to reinstate or repair the building, if the same could be lawfully rebuilt or repaired.”

It is a healthy provision, as well as a legal one, and would remedy a glaring injustice in the present construction of the contract. (**2029.**)

## UNDER DOUBLE INSURANCE.

**1849.** Where other companies had insurance on the building, and that the insurer's policy alone was not sufficient in amount to reinstate the building, makes no difference with the fact, as it is such insurer's business to procure the co-operation of his co-insurers, and to see the building repaired or restored, in order to remove his liabilities under the policy.

*Morrell v. Ins. Co.*, 33 N. Y. 429; *Home Ins. Co. v. Thompson*, 1 U. C. Rrr. & App. 247; 3 Am. Law Reg. (N. S.) 404.

## LOSS PAYABLE TO THIRD PARTIES.

**1849a.** After loss, under a policy containing the stipulation permitting the insurer to rebuild, the insured, by an order on the policy, directed the loss to be paid to another party, to which the underwriters assented:—

**Held:** That the right of the insurers to replace, if they so elect, was not affected by the order and assent; such order simply operating as an assignment of the claim, and in no way affected the rights of the company in the premises.

*Tolman v. Ins. Co.*, 1 Cush. Mass. 73; 1 Philips Ins. 64, 103; 1 Cush. Mass. 73; 33 N. Y. 429; 36 *id.* 522.

*Garnishee Process.* The company by its determination to rebuild is discharged from this process. The money at the time of service of the process was not defendant's, for the Company had not then decided, under the conditions of its policy, to pay cash or rebuild. (*Godfrey v. Macomber*, 128 Mass. 1885. *Ætna Ins. Co. v. Phelps*, 27 Ill. 70.)

**1850.** It has been held in Michigan, when the policy allowed the underwriters to rebuild, that the insurers were liable for loss, less the value of the materials left, though this was more than the expense of rebuilding. (*Brady v. Ins. Co.*, 11 Mich. 425.)

## CHATTEL PROPERTY.

**1851.** **Held:** Where, by the terms of the policy, the underwriters have the option, within twenty days, after the proofs of loss have been received, to elect to replace articles lost or damaged by fire, they are not entitled to file a bill for an injunction to restrain the insured from removing or disposing

ing of his goods until after the expiration of twenty days, to enable them to take an inventory, and with a view to such election. But if the insured remove the goods to prevent an examination of them, he incurs against himself the presumption of fraud. (*N. Y. Fire Ins. Co. v. Delavan*, 8 Paige Chy., N. Y. 419, 2 Benn. F. I. Cases 20.)

**1852.** In cases of replacing *machinery*:—

**HELD:** The jury are to say what state of repair the *machinery* was in; what it would cost to replace it with *new machinery*, and how much better, if any, the mill would be with the *new machinery* than it was at the time of the fire with the old, and the difference is to be deducted from the entire expense of placing therein such new machinery. (1710.)

*Franklin F. C. Co. v. Hamill*, 5 Md. 170; *Vance v. Foster*, 2 Crawf. & Dix., 1 Irish R. 118; 3 Stevens N. P. 20, § 4.

**1853.** In the *reinstatement* of *personal property*, the insurers cannot reinstate a portion only, and pay for the remainder; they must reinstate the whole.

5 Barr. Penn. 183; 5 Md. 170; *Flanders Ins.* 573.

**1854.** In replacing *personal property*, the underwriter may do so by any means he sees fit, the conditions being that articles replaced must be as good in quality and condition as those lost; and they must be replaced within a reasonable time; but incidentals, such as traveling expenses, advertising, cost of introducing the articles, and similar charges, are not legitimate items to be made good by the insurer.

*Haskins v. Ins. Co.*, 5 Gray Mass. 432; *Ins. Co. v. Delavan*, 8 Paige Chy. 41, 408.

UNDER RAILROAD POLICIES.

**1855.** While, as a *general principle*, the underwriter, under the operation of the condition of the policy, would have a right to reinstate all kinds of property lost under insurance, at his option, yet there are cases where this right cannot be enforced without detriment or injury to the public, as *railroad bridges*, and some turnpike bridges, where the necessities of public travel would require the reconstruction with the least possible delay.

**1856.** The more modern form of railroad policies provides for rebuilding—at the option of the railway company—not only

bridges, but any of the buildings covered by the policy. The facilities at hand enable any railway company to rebuild, not only much more expeditiously, but much more economically than any insurance company could do under the most favorable circumstances.

**1857.** *Reinstatement* takes place only when the property has been *over-insured*, and it can be effected at an amount less than the face of the policy. It relieves the law of fire insurance from a distinction which prevails in marine insurance, that in total losses the insured may abandon the goods and claim a total loss, which, under the *reinstatement* stipulation, he cannot do. (1820.)

#### SUCCESSIVE LOSSES.

**1858.** Under the peculiar terms of a *mutual* or a *perpetual* policy, where the insurance is for a number of years, it has been held that the company would be liable for *successive losses* occurring during the term of the insurance, until the amount at risk has been exhausted. (*Crombie v. Portsmouth Mut. F. I. Co.*, S. C. N. H., 6 Foster 389.)

**1859.** MR. PARSONS says:—

"If the insurers rebuild under the reinstatement clause, at a less cost than the amount they insure, their liability is not exhausted thereby; they are then insurers of the new building for the difference between its cost and the amount they have insured on the original one."

The following case is an illustration of this doctrine, under a *mutual policy*:—

Where two buildings were covered under the policy of a mutual company, to the amount of \$1,000 each, for the period of seven years, the policy containing the following condition:

"The company agree to pay *all* losses which shall happen to the buildings *within the term*, not exceeding the amount insured thereon," and, "in case of loss, the company may repair or replace the same within a reasonable time."

The buildings were consumed, one totally, the other nearly so, and the company replaced them, one at the cost of \$800, and

the other at \$650, a small portion of material having been saved fit for use in rebuilding the latter, leaving an unexhausted balance of insurance to the amount of \$550. Subsequently, and prior to the expiration of the policy, the new buildings were both totally consumed. A claim was made upon the company for the unexhausted insurance, which was resisted upon the ground that the reinstatement of the original buildings was full indemnity to the insured, and equivalent to payment of a total loss, and consequent cancelment of the policy. Suit was brought, and SHAW, Chief Justice:—

**Held:** That the sum insured on each building being \$1,000, the insured was entitled to indemnity thereon to the amount of \$1,000; and this was not exhausted by the payment of the several sums, \$800 and \$650, towards rebuilding, any more than it would have been by paying the plaintiff the like sums of money. (*Trull v. Roxbury Mut. F. I. Co.*, 3 Cush. Mass. 263.)

Judgment was rendered against the company for the unexhausted balance of \$550, thus virtually making the policy not only a valued one, but continuous also.

**1860.** In England, where policies run for *seven* years, *successive losses* are specifically provided for, as in the policy of the *Hand-in-Hand Insurance Company*, which reads:—

"Will pay the assured, his executors, administrators, or assigns, so often as the house should be burnt down within the said term (seven years), unless the directors should build the said house or put it in as good plight as before the fire."

**1861.** This stipulation is characteristic of the *perpetual* policy. The Mutual Assurance Society of Virginia, A. D. 1749 (**439**), and the Equitable of Baltimore (**89**), both have the same clause.

#### PRELIMINARY PROOFS.

**1862. Conditions of the policy.**—"Persons sustaining loss or damage by fire shall forthwith give notice of said loss to the company, and as soon thereafter as possible render a particular account of such loss, signed and sworn to by them, stating whether any and what other insurance has been made on the same property, giving copies of the written portion of all policies thereon, also the actual cash value of the property and their interest therein, for what purpose and by whom the building insured or containing the property insured, and the several parts thereof, were used at the time of the loss, when and how the fire originated."

**1863.** The preliminary proofs are not of the substance or essence of the contract, but relate only to the form or mode in which the liability of the company shall be shown. (*Master v. Ins. Co., N. A., C. A. N. Y., 3 Ins. Law Jour. 273.*)

The items of the particular account, upon which information is to be given, set forth in detail in the conditions of the policy and embodied in proper form, are the first evidence of a claim for loss, designated "*preliminary proofs*," and intended to embrace all requirements of the "*conditions*" of the policy relative to claims for loss; setting forth, in a condensed form, though in general terms only, all facts counted upon to substantiate the claim, but relying upon *vouchers* and *supplementary proofs* therein referred to, and made a portion thereof, for further details.

*Continental Ins. Co. v. Lippold, S. O. Neb., 2 Neb. 391, 4 Ins. Law Jour. 430; McLaughlin v. Ins. Co., 23 Wend. N. Y. 625; Laurence v. Ins. Co., 11 Johns. N. Y. 240; Smith's Merc. Law, 516, n. 10; Edgerly v. Ins. Co., S. C. Iowa, 5 Ins. Law Jour. 846; Blakely v. Ins. Co., 20 Wis. 217; Iaman v. Ins. Co., 12 Wend. N. Y. 452; Owen v. Ins. Co., 47 Barb. N. Y. 518; Nicolet v. Ins. Co., 3 Louis. 368, 1 Benn. F. I. Cases 385; Phenix Ins. Co. v. Stereuson, C. A. Ky., 8 Ins. Law Jour. 927; Civil Code L. C., § 2478; Whyte v. West. Assur. Co., 22 L. O. J. 215, 7 R. L. 106; Mason v. Hervey, 8 Exch. 819, 22 L. J. Ex. 236; Roper v. Lendon, 5 Jur. N. S. 491, 23 L. J. Q. B. 260, 1 Ell. & Ell. 825; Cameron v. Canada F. & M. Ins. Co., C. P. Div. Ont.; 19 How. 299; Hicks v. Ins. Co., 6 Mo. App. 284; Greaves v. Ins. Co., 25 U. C. Q. B. 157; Banting v. Ins. Co., 25 U. C. Q. B. 431; Richardson v. Ins. Co., 16 U. C. C. P. 139.*

**1864.** It will be noticed by reading the *ninth* section of the conditions of the *National Board* form of policy, that no provision is made for forfeiture on account of failure to furnish proofs in the formal manner required; the alternative simply being that "until such proofs are produced the loss shall not be payable." A compliance with the stipulation *within a reasonable time*, however, is a condition precedent to the right of the insured to recover for a loss, otherwise a claim might be withheld for years, or until all means of proper investigation were lost. (1862.)

*Wiggins v. Queen Ins. Co., 13 L. C. J. 141; Killips v. Ins. Co., 28 Wis. 472; Cornell v. Le Roy, 9 Wend. N. Y. 163; McEvers v. Lawrence, 1 Hoff. Ch. N. Y. 171; Edwards v. Ins. Co., 3 Gill. Md. 176; Kingsley v. Ins. Co., 8 Cush. Mass. 393; Lampkin v. Ontar. M. & F. Co., 12 U. C. Q. B. 578; Trask. Ins. Co., 29 Penn. St. 198.*

## SPECIFIED TIME.

**1865.** Where the condition of the policy requires the proofs to be furnished *within a specified time*, as fifteen days, or thirty days, it must be strictly complied with. "*Time is of the essence of the contract*," and under such condition the courts cannot dispense with the requirement, nor excuse its non-performance. It is not like a duty *created by law*, the performance of which is excused if performance is rendered impossible by the "act of God," but it is a duty *created by contract*, and which the insured must perform or lose the benefit of his insurance.

Where no particular number of days are stipulated for, the proofs must be made without *unreasonable delay, under the circumstances of the case*. The time necessary in cases of total loss will vary with the occasion. Where the books and papers of the insured are consumed, or other similar contingencies, it will require more time than where the loss was partial only, and the needful information is at hand ready for the occasion.

*Tait et al. v. N. Y. Life Ins. Co.*, 2 Ins. Law Jour. 872, and numerous authorities cited; *Solomon v. Ins. Co.*, 1 Hoff. Ch. N. Y. 171; 1 Starkie Ev.; Civil Code L. C., § 2478; *Black v. Ins. Co.*, 24 L. C. J. 76, 3 L. N. 29; *Lafarge v. Liv. & Lond. & G.*, 17 L. C. J. 237; *Garceau v. Ins. Co.*, 3 Q. L. R. 337; *Kelly v. Ins. Co.*, 3 L. N. 63, 24 L. C. J. 298; *Armstrong v. Northern Assur. Co.*, 4 L. N. 77; *Dills v. Quebec F. I. Co.*, 1 R. de L. 113; *Carter v. Ins. Co.*, 19 U. C. Q. B. 314.

## DELIVER IN.

**1866.** In the conditions of some policies the claimant is required to *deliver in* a particular account, etc., of the loss:—

Held: "That this stipulation is not complied with by depositing such statement, properly made out, in the post-office, in a sealed envelope, post-paid and addressed to the secretary of the company."

*Hodgkins v. Ins. Co.*, 34 Barb. N. Y. 213.

But if such statement be mailed *and come safely to hand*, there would seem to be no question as to that being a sufficient compliance.

*Davis v. Scot. Prov. Ins. Co.*, 16 U. C. Q. B. 176; *Desilver v. Ins. Co.*, 39 Penn. St. 130.

Under the ordinary stipulation of the policy, a statement of loss properly directed to the company or its officers, and mailed in due season, would be a sufficient compliance. (*Killips v. Putnam F. I. Co.*, 28 Wis. 472.)

#### PARTICULARS OF LOSS.

**1867.** It was held by STORY, C. J. :—

That "the *particular account* required by the condition of the policy, was that of the articles lost or damaged, and not of the manner or cause of the loss." (*Catlin v. Springfield F. & M. Ins. Co.*, 1 Sumner C. C. U. S. 434.)

**1868.** This stipulation of the condition has always been construed liberally, as the insured must necessarily often labor under great embarrassment, as when his books of account, invoices, etc., may have been lost, and thus put it out of his power to furnish *all* of the particulars called for.

"Its meaning is that the assured will, within a *convenient* time after the loss, produce something to the company, which will enable them to form a judgment as to whether or not he has sustained a loss." (1897.)

Held: That the ability to "*render a particular account*" will be dependent upon the circumstances of each individual case. Where the books and papers of the insured are destroyed by the same fire which consumes the property, he is prevented from complying with the conditions of the policy, and a less "*particular statement*" is held to be sufficient, and all that is called for within the fair meaning and intent of the parties as expressed in the contract and modified by the stipulation, which only requires "as much particularity" as the nature of the case will admit of.

*McLaughlin v. Ins. Co.*, 23 Wend. N. Y. 525; *Mason v. Harvey*, 8 Wel. Hurl. & G. Exch. 819; *Norton v. Ins. Co.*, 7 Cow. N. Y. 645; 2 Kern. N. Y. 81; *Welcome v. Ins. Co.*, 2 Gray Mass. 459, 480; *Lounsbury v. Ins. Co.*, 8 Conn. 459; *Hoffman v. Aetna Ins. Co.*, 1 Rob. N. Y. 501, s. c. 19 Abb. Pr. 325, affirmed 12 N. Y. 405; *Ins. Co. v. Schollenberger*, 44 Penn. St. 257; *Ins. Co. v. Updegraff*, 40 Penn. St. 311; *Greaves v. Niag. D. M. Ins. Co.*, 25 U. C. Q. B. 127, 431; *Mulvey & Gore Dist. Ins. Co.*, 25 U. C. Q. B. 424; *Carter v. Ins. Co.*, 19 U. C. C. P. 143; *Dakin v. Ins. Co.*, N. Y. C. A., 8 Ins. Law Jour. 577.

**1869.** The claimant must prove that the property lost was covered by the policy; that the loss was caused by the peril insured against, and its value at the time of the fire. And he is bound by the statement thus made and delivered,

and he cannot upon trial impeach its truth and recover upon testimony showing a different state of facts from that which it contains. (1871.)

McMaster v. Ins. Co. N. A., N. Y. C. A., 3 Ins. Law Jour. 273; Mut. Benefit Life Ins. Co. v. Newton, U. S. S. C., 4 Ins. Law Jour. 685; O'Reilly v. Life Ins. Co., N. Y. C. A., 4 Ins. Law Jour. 843; Ins. Co. v. Watson, 23 Mich. 482; Ins. Co. v. Zainger, 63 Ills. 464; Ins. Co. v. Heilman, 9 Ins. Law Jour. 91; Irving v. Ins. Co., 1 Bosw. 507, 4 Benn. F. I. Cases 213; 16 Ins. Law Jour. 208.

## PRELIMINARY PROOFS AS EVIDENCE.

**1870.** Although the "*preliminary proofs*" are called for by the insurer, and no objection is made to their regularity, yet the insured cannot prove the amount or extent, as to *value* or *quantity* or *quality* of his loss, or the particulars thereof, by his own statement, if there be nothing in the policy making such statement evidence as to the property lost.

Browne v. Ins. Co., S. C. Mo., 8 Ins. Law Jour. 431; Howard v. Ins. Co., 4 Denio N. Y. 502.

**1871.** Where proofs of loss disclose the existence of matters in avoidance of the policy, such admissions dispense with any other proofs against the insured as to such matters of avoidance. (Parmlee v. Hoffman Ins. Co. N. Y., C. A., 3 Ins. Law Jour. 111.)

Graham v. Ins. Co., N. Y. C. A., 8 Ins. Law Jour. 657.

Held: That, such *proofs* being merely an *ex parte* statement of the insured, they cannot be turned into *prima facie* evidence of the most important part of his case; he cannot make such evidence for himself.

Ins. Co. v. Sennett, 41 Penn. St. 131; Ins. Co. v. Schreffler, 42 Penn. St. 158, s. c. 44 id. 269; Newmark v. Liv. & Lond. & G. Ins. Co., 30 Mo. 160; R. R. Co. v. Winslow, 66 Ill. 219; Ins. & Trust Co. v. Lewis, 42 Ga. 587, 4 Ins. Law Jour. 847.

Nevertheless, such *preliminary proofs* may be read to the jury, but only as evidence that there had been a compliance with the conditions of the policy requiring them, or for the purpose of refreshing the memory of a witness. The *sufficiency* of such *preliminary proofs* is for the courts; if not sufficient the cause is at an end, unless an express or implied *waiver* by the insurer can be proved. Whether the *amount* of loss furnished is as "particular" as the case admits of, o

whether the proofs were *delivered in* within reasonable time, or whether there has been a *waiver*, is for the jury.

Ins. Co. v. Lawrence, 4 Metc. Mass. 9; R. R. Co. v. Winslow, 66 Ill. 219; Home Ins. Co. v. Balto. W. H. Co., U. S. S. C., 1876; Stiles v. Hanover Ins. Co., S. C. Wis., 15 Ins. Law Jour. 443; Ins. Co. v. O'Neill, S. C. Pa., 15 Ins. Law Jour. 309.

#### MISTAKES AND OMISSIONS.

**1871a.** *Held*: If the insured, through *mistake*, makes an incorrect statement of a *material* matter in his *preliminary proofs*, and files no amendatory statement correcting the previous one, he cannot, on trial, be permitted to show that by *mistake* he misled the insurers in matters where he bound himself to state truly, as a condition precedent to his right of recovery. (Campbell v. Ins. Co., 10 Allen Mass. 213.)

**1872.** When a party, in making up his proofs of loss inadvertently omitted mention of certain articles which were destroyed, he may, if the claim is not paid and suit is brought, recover for the articles destroyed but omitted in the proofs.

Rice v. Prov. Ins. Co., 7 U. C. C. P. 548; Robbins v. Vict. Mut. Ins. Co., Ont. C. P.; Hoffman v. Aetna Ins. Co., 1 Rob N. Y. 501, s. c. 32 N. Y. 405; affirmed, 19 Abb. Pr. 325; Aetna Ins. Co. v. Stevens, 43 Ill. 31; Ins. Co. v. Huckberger, 52 Ill. 464; 1 Parsons Con. 416; Wood Ins. 427; 2 Johns. Cases N. Y. 157; Untersinger v. Niagara Ins. Co., Ohio Dist. Ct., 10 Ins. Law Jour. 237; 52 Ill. 466; 58 id. 63.

#### WHO MAY MAKE PROOFS.

**1873.** *Condition of the policy.*—"If this policy is made payable in case of loss to a third party, or held as collateral security, the proofs of loss shall be made by the party originally insured, unless there has been an actual sale of the property insured."

The *preliminary proof* may be executed by any member of a firm signing for the firm, or by any duly authorized *agent* for any party insured. (**1379.**)

**1874.** *By an agent.* *Held*: That, under ordinary circumstances, to be a fatal objection; for it may, with propriety, be said that the owner is supposed to know not only his own loss, but also any secret reason why he should not be paid. The company contracted that he should take the responsibility of the oath, and if he was the one with whom they had personally dealt, who had knowledge of the matter, he would be bound to assume the responsibility. But where the policy was obtained by the agent upon an application made by himself, and the premium was paid by him and the

premium note executed by him, and he had other policies on the same property obtained by himself, and when the principal was unknown to the company, proofs made by such agent would be a compliance with the conditions of the policy. (*Sims v. State Ins. Co.*, 47 Mo. 54.)

*Keeler v. Ins. Co.*, 16 Wis. 523; *Ayres v. Hartford Ins. Co.*, 17 Iowa 176; *O'Connor v. Hartford Ins. Co.*, 33 Wis. 160; *Kernochan v. Ins. Co.*, 17 N. Y. 428; *Walker v. Ins. Co.*, 57 Me. 28.

**1875.** That *insanity* was a sufficient excuse for failure to comply with the condition of the policy requiring such an affidavit.

That if the affidavit contained the necessary information as to the time, amount, and circumstances of the loss, it was sufficient, though the insured was insane when it was made. (*Ins. Co. v. Boykin*, 12 Wall. U. S. 433.)

Where the insured fails to make proofs of loss, creditors can attach and supply proofs by the best possible evidence within their reach, substantial compliance with the requirements of the policy in relation to proofs of loss is all that is required of the insured. (3 Bush, Ky. 328, 333; 25 Barb. N. Y. 189; *Van Bories et al. v. Life Ins. Co.*, S. C. Ky.)

#### UNDER OPEN FIRE OR CONTRACT POLICIES.

**1876.** In cases of loss under *open fire* or *contract policies*, the proofs of loss should contain a copy of the written portion of the policy, with the specific indorsement covering the property lost or damaged, with the statement of any other insurance that may be upon the same, together with such other particulars required in ordinary cases as may be pertinent to the occasion. (**314, 316, 317.**)

#### UNDER RE-INSURANCE.

**1877.** In cases of loss or damage under *re-insurance*, the condition of the policy requiring *preliminary proofs* and other *vouchers* is held to be complied with by the re-insured company forwarding to the re-insurer the *notice* and *proofs* of the original insured as soon as received.

When two or more re-insurances have been made upon the same risk, in case of loss the *original proofs* cannot be served upon each re-insurer; in such event *certified* copies of the original must be made and sent to such re-insurers. (**1045a.**) (*N. Y. Bowery Ins. Co. v. N. Y. Ins. Co.*, 17 Wend. 359, 1 Benn. F. I. Cases 569.)

## WAIVER OF THE PRELIMINARY PROOFS.

**1878.** *Preliminary proofs*, though a condition precedent to recovery, *may be waived*, and hence are important only when made so by the insurer for whose security and information they are alone required. They have no relation to the merits of the case, and are never required by the law; they are the consequence of special conditions, and though they may be lawfully insisted upon, still they may be lawfully *waived*.

Ins. Co. v. Neve, C. A. S. C., 2 McMullin 237; 2 Benn. F. I. Cases 153; Wightman v. Ins. Co., 8 Rob. La. 442, 2 Benn. F. I. Cases 330; Priest v. Ins. Co., 3 Allen Mass. 662; Underhill v. Ins. Co., 6 Cush. Mass. 440; Hicks v. Ins. Co., St. Louis Mo. C. Ap.

**1879.** As a rule, insurers must *object specifically* to any and all mere defects in *form*, in due season to enable the insured to remedy the same, if they mean to rely upon such defects as substantial.

Ins. Co. v. Kyle, 11 Mo. 278; Ins. Co. v. Harmer, 2 Ohio St. 452; Noyes v. Ins. Co., 30 Vt. 659; Ins. Co. v. Coates, 14 Md. 285; Ins. Co. v. Whitehall, 25 Ill. 406; Desilver v. Ins. Co., 38 Penn. St. 130; May Ins. 573; 7 Ins. Law Jour. 140, 481.

**1880.** Like the notice of loss, it is held that the reception *in silence* of preliminary proofs, furnished in good faith, or without objection to their *form*, is evidence of a *waiver*, temporary or absolute, of any merely technical defect therein.

Walker v. Ins. Co., 56 Me. 371; Home Ins. Co. v. Cohen, 20 Gratt. Va. 312; Boynton v. Ins. Co., 16 Barb. N. Y. 254; Wood Ins. 716, 718.

**1881.** HELD: "The mere reception of the proofs *in silence* did not amount to a *waiver*; and that the fact that the company did not object to the proofs, and gave to the insured no notice of any deficiencies, and made no request for further particulars, only amounted to receiving them *in silence*, from which the jury were not authorized to infer a *waiver*. To make a case of *waiver*, *silence* and something more is required; and that something must be more than simply equivalent to *silence*. (Keenan v. Ins. Co., S. C. Iowa 186.)

Beatty v. Lycoming Ins. Co., 16 P. F. S. Pa. 9; Franklin Ins. Co. v. Chicago Ice Co., 36 Md. 102; Savage v. Ins. Co., 4 Bosw. N. Y. 1; Whyte v. West. Assur. Co., 22 L. C. J. 215, 7 R. L. 106.

**1882.** Where the board of a company resolved "that the claim (of the assured) be resisted, and that the secretary furnish them with a copy of this resolution." The claimants contended that such refusal *waived* all objections to the *preliminary proofs*; HELD, by MARSHALL, C. J.:—

"That the resolution of the board to resist the claim is expressed in general terms, and consequently applies to every part of the testimony offered in support of it. We know of no principle nor usage which requires underwriters to specify their objections, or which justifies the inference that any objection is *waived*. We know of no principle by which *preliminary proofs* should be separated from the other proofs which were required to sustain the claim, and its insufficiency be remarked to the insured. The general resolution of the board was notice to the assured that if they intended to assert their claim in a court of justice, they must come into court prepared to support it." (*Roumage v. Ins. Co.*, 1 Green N. J. 110.)

DRAKE, J., Supreme Court of New Jersey, commenting on this ruling, says:—

"They are unquestionably sound. A party cannot be obliged in this way to disclose his defense."

**1883.** In the case of *Dawes v. The North River Insurance Company*, 7 Cowen 462, there was not only no objection made to defects in the *preliminary proofs*, but there was an express *waiver* by the president of the company: HELD: He had no authority to make such *waiver*, and decided the cause against the claimant, paying no attention to the *waiver* to be implied from want of objection.

**1884.** *Waiver*, on account of delay, may be only temporary:—

HELD: "The neglect of the underwriter to point it out, though it may be a sufficient excuse to the insured for not producing the proofs corrected until demanded, it is not a *waiver* of their right subsequently to demand that the defect shall be supplied, *provided* that the insured has not, in the meantime, lost the means of supplying it." (*Edwards v. Ins. Co.*, 3 Gill. Md. 276.)

**1885.** In case of a demand for a loss under an agreement to make a policy against fire, a denial of such agreement by the insurers is held to be a *waiver* of preliminary proofs of loss *within the time* stipulated in the form of policy used by the company. (**1870.**) (*Taylor v. Ins. Co.*, 5 How. 390.)

**1886.** An offer to compromise and pay a part of a claim, no objection being made as to the sufficiency of the proofs rendered, is a *waiver* of any insufficiency; also that a part payment of a claim was a *waiver* of any defect in the proofs. The *waiver of notice of loss is not a waiver of preliminary proofs.* (Westlake v. Ins. Co., 14 Barb. N. Y. 206.)

**1887.** Blank forms of *preliminary proof*, embodying the requirements of the conditions of the policy, in case of loss or damage, are usually sent voluntarily by the companies to facilitate the adjustment of honest losses; which, with the necessary accompanying "*vouchers*," and *supplementary* proofs, it will be the duty of the claimant to make up to the *satisfaction* of the company.

**1888.** That such proof shall be *satisfactory* does not imply such evidence as caprice may require but such as may be pertinent to the facts of the loss, and would be likely to satisfy reasonable men.

## VOUCHERS,

### AND OTHER SUPPLEMENTARY PROOFS.

**1889.** *Condition of the policy.*—"And until such proof, declarations and certificates are produced . . . the loss shall not be payable."

**1890.** In all cases of adjustment there are certain necessary "*vouchers*," essential to the perfection of the proof, as representing the facts and figures upon which the *preliminary proof* is to be predicated, and forming the basis of the claim.

**1891.** These vouchers should embrace the following:—  
(2350).

*First:* A list of *other insurance* upon the property, if any—*Schedule A.*

*Second:* A detailed statement of the *value* of the property at the time of the fire; and *amount of loss or damage* thereon caused by the fire—*Schedule B.*

*Third:* A statement of the ownership or *interest* of the insured in the property.

*Fourth:* The *occupation* of and use to which the premises burned, or containing the property destroyed or damaged, was put at the time of the fire.

*Fifth:* The *cause of the fire*, so far as known to the insured.

*Sixth:* *Magistrate's or notary's certificate.*

#### FIRST.—OTHER INSURANCE.

**1892.** Exact copies of the written portions of ALL policies of other companies interested in the loss, whether concurrent or otherwise, if any such exist, giving date, time, amount of insurance, property at risk, rate and amount of premium received by each company, with any indorsements on or renewals of any of such policies.

**1893.** "The furnishing copies of *other policies* was a condition precedent, without which or a *waiver* by the company, no recovery could be had upon the policy; that as it was a matter of contract, in which the insured might have guarded against the impossibility of performance, his inability to give such proof, or account of loss of policy, affords no excuse." (20 Wis. 205.)

**1894.** The condition of the policy calls for "copies of the written portion of *all policies thereon.*" This leaves it an open question whether or not this comprehensive term *all*, in this connection, would not embrace any policies which might be held by mortgagees, or lessees, not co-insurers, nor required to contribute to losses upon property covered with other direct insurance.

**1895.** It is the evident intention of this clause, however, that *all* such policies shall be included in the proofs, so that the underwriter may be in possession of all the facts, (1891.)

#### SECOND.—VALUE OF PROPERTY AT RISK.

**1896.** The insurance, in itself, is neither proof nor presumption of the value or existence of the insured property. (1876, 1910.)

**1897.** In cases of STOCKS OF GOODS, these "*vouchers*" consist of any cumulative, itemized evidence, going to prove the general statements called for by the *preliminary proofs*: usu-

ally taken from the *books of account* of the assured, such as inventory of stock first taken; bills of purchase made since the inventory up to the time of the fire; sales for cash or credit during the same period of time, less the estimated profits on such sales.

**1898.** Under a *valued policy* the insured needs not to prove the *value* except in cases of fraudulent over-valuation. (282.)

## AMOUNT OF LOSS.

**1899.** Proof of the *amount of loss* means not only the delivery of particulars of the claim, but the exhibition of such legal evidence to support it as the circumstances of the case will admit of, supported also by the jurat of the claimant. The inventory of goods saved, with the appraiser's list of damages added, and this amount deducted from the *total value* of the property as found at the time of the fire, will give the *gross amount of loss*.

**1900.** Invoices, books of account, sales, and inventories of stock taken immediately after the fire, and the testimony of the clerk of the insured, are proper evidence of the *loss by removal* of goods, when endangered by fire. (1789.)

**1901.** If the insured, his books being burned, estimate his loss, in a preliminary proof, from a previous account of stock, and subsequent purchases and sales, he should state not merely the result, but how he makes his estimates so as to arrive at his results. (Philips v. Ins. Co., 14 Mo. 220.)

Norton v. Ins. Co., 7 Cow. N. Y. 645; Barker v. Ins. Co., 8 Johns. N. Y. 307; Bumstead v. Ins. Co., 12 N. Y. 81.

**1902.** Stating the entire loss, under two or more policies without distinguishing the amount covered by the policy in question, held not to be a good account. (Lycoming Ins. Co. v. Updegraff, 40 Penn. St. 311.)

**1903.** In smaller stores it is frequently the custom to take out articles for family and other uses, without making any

entry thereof upon the books. Quite large amounts might be and often have been thus taken and paid for by the underwriter as loss. It is but justice that the sums thus appropriated should be credited to the company in the proofs.

**1904.** Where a firm has been in business for a number of years, a large amount of old, shopworn, and deteriorated stock will accumulate, upon which a discount of *ten to twenty-five* per cent., or even more, should be made to bring it to *cash value* at the time of adjustment. (1746.)

**1905.** New stock will be bought from time to time to "kitchen" up and help dispose of the old; but the larger portion of the daily sales will be of the *newer* goods; the "*shopkeepers*" will disappear slowly. *Note this!*

**1906.** On HOUSEHOLD PROPERTY the "*vouchers*" should be a list, with present *cash values*, after making allowance for use, of the furniture destroyed; or in case of damage only, if of any extent, by submission to appraisers; but the most satisfactory way is by mutual agreement of owner and adjuster. A skillful adjuster can save time and money by dispensing with appraisers, and going through the loss with the claimant himself, in this class of cases. (1719.)

**1907.** On MILLS and MACHINERY losses the adjustment is usually so complicated and important, in consequence of the sums involved, that experienced *men* only are intrusted with its management. As a number of companies are usually interested in such losses, it is customary to select committees to which the adjustment is intrusted. (1710.)

**1908.** In cases of loss or damage to BUILDINGS, the "*vouchers*" will be the "*bid*" or "*estimate*" of some responsible builder for which he will *contract* to rebuild or repair the premises, and not his simple *valuation* of what the loss or damage may appear to be. (1717.)

**1909.** When these *vouchers* are voluminous, it will be sufficient that they be submitted to and approved by the adjuster,

who should scrutinize them carefully in detail; comparing values, examining extensions, footings, etc., to detect errors, accidental or intentional. In this case only the respective amounts need appear, in a condensed form.

#### THIRD.—INTEREST OR TITLE.

**1911.** The interest of *the insured* in the property, if real estate, whether in fee simple or absolute—legal or equitable—if anything less than the whole; or, if personal property, whether held in trust, or on commission, or on storage, or sold but not delivered, or not removed, such interest and its extent must be clearly set forth in the proofs, with the names of the respective owners, *and be certified to by them.* (650.)

*Ins. Co. v. Lowell*, S. C. Penn., 4 Ins. Law Jour. 195; *Ins. Co. v. Beck et al.*, Md. C. A., 5 Ins. Law Jour. 289; *Tuck v. Hartford Ins. Co.*, S. C. N. H., 5 Ins. Law Jour. 497; *Ins. Co. v. Curry*, O. A. Ky., 6 Ins. Law Jour. 733; *Porter v. Etna Ins. Co.*, U. S. C. C. Mich., 6 Ins. Law Jour. 928.

TITLE has respect to that which is the subject of *ownership*, and is the foundation of *ownership*. (650.)

INTEREST differs from *ownership*; the terms are not synonymous. *Interest* is a qualified *ownership*, and implies a portion or share. *Insurable interests* arise under various circumstances. (655.)

OWNERSHIP is the right by which a thing belongs to some one in particular to the exclusion of all others: *an absolute title.* (1291.)

OWNER is one who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, so far as the law permits.

*Nichols v. Ins. Co.*, 1 Allen Mass. 63; *Fowler v. Ins. Co.*, 23 Barb. N. Y. 130; *Ins. Co. v. Berry*, S. C. Kans. 1871.

POSSESSION is *prima facie* evidence of title to property, but open to be rebutted by other evidence.

#### FOURTH.—OCCUPATION.

**1912.** The *occupancy* of the premises at the time of the fire must be given in detail; all changes in *use* or *occupancy* since the application was filed, or policy issued, must be carefully noted in the proof. (1127.)

*Ashworth v. Ins. Co.*, S. J. C. Mass., 3 Ins. Law Jour. 489.

## FIFTH.—ORIGIN OF THE FIRE.

**1913.** The insured must give all the information within his knowledge upon this point, and must assert the fire did not originate by any act, *design*, or procurement on *his* part, nor on the part of any one having any interest in the said policies of insurance; nor in consequence of any fraud or evil practice done or suffered by *him*. (1378.)

*Design* imports a plan, scheme, or intention carried into effect.

## MAGISTRATE'S CERTIFICATE.

## SIXTH.

**1914.** *Condition of the policy.*—"And shall also produce a certificate under the hand and seal of a magistrate or a notary public (nearest to the place of the fire, not concerned in the loss as a creditor or otherwise, nor related to the assured), stating that he has examined the circumstances attending the loss, knows the character and circumstances of the assured, and verily believes that the assured has, without fraud, sustained loss on the property insured to the amount which such magistrate or notary public shall certify."

**1915.** It is customary to append to the preliminary proofs, as a part thereof, the *certificate of a magistrate* (2353) or notary public, residing "nearest" or "most contiguous" to the fire, and consequently supposed to know the correctness of the facts set forth in the proofs, stating his belief in the honesty of the claimant, and his opinion as to the amount of the loss sustained by him. The condition of some policies requires that he shall certify that "he *knows* and believes that the insured has really and by misfortune, without fraud, sustained loss to the amount *therein* named." Chancellor WALWORTH held, that the phrase "amount *therein* named" referred to the amount named in the certificate which might or might not be the same as that claimed by the insured in the proofs.

In Indiana, under the Law of Dec. 2, 1865, this certificate is unnecessary. (1930.)

Banyon Ins. 102; Worsley v. Wood, L. T. R. 710; 2 H. Black. 574.

**1916.** This stipulation, intended, to guard the underwriters against frauds that might be practiced upon them by designing men, was made in the early days of fire insurance, while it was as yet comparatively an experiment. In the English policies, where the clause originated, a certificate is required "from the nearest minister of *the gospel*, *church-wardens*, *neighbors*, or *inhabitants*, respectable freeholders, not concerned in such loss, importing that they were well acquainted with the character and circumstances of the person or persons insured, and do know or verily believe that he, she, or they, really and by misfortune, without fraud or evil practice, have sustained by such fire the loss and damage as his, her, or their loss, to be value therein mentioned." (2 Magin's Essays 376, § 1327.)

*Oldman v. Bewicke*, 2 H. Bl. 577, n. 1; *id.* 254; 6 Term. 710; *Mason v. Harvey*, 8 Exch. 819; 6 Durnf. & E. 711.

**1917.** Prior to A. D. 1800, a number of suits were decided under this clause in England, and created a great deal of discussion pro and con as to its materiality; but it was eventually decided (A. D. 1796):—

That "the procuring of such a certificate was a condition precedent to the right of the assured to recover; and it was immaterial that the minister, etc., wrongfully refused to sign the certificate."

*Scott v. Phoenix Ins. Co.*, Stuart L. C., 152 *id.* P. C. R. 354; *Langel v. Ins. Co.*, 17 U. C. Q. B. 524; *Leadbetter v. Ins. Co.*, 18 Me. 205; *Ætna Ins. Co. v. Tyler*, 16 Wend. N.Y. 385; *Furley v. Ins. Co.*, 25 Wend. N.Y. 374; *Roumage v. Ins. Co.*, 13 N. J. 116; *Ins. Co. v. Pherson*, 5 Ind. 417; *Neenan v. Ins. Co.*, 21 Mo. 81; *Cornell v. Ins. Co.*, 15 Martin La. 223; *Johnson v. Ins. Co.*, 112 Mass. 49; *Beach v. Humboldt Ins. Co.*, 35 N. J. 429, overruling 13 N. J., *supra*; *Alderman v. Ins. Co.*, 5 U. C. B. K. 37; *Ins. Co. v. Lawrence*, 10 Peters U. S. 507; 2 *id.* 25; *Williamson v. Commercial Union Ins. Co.*, 25 U. C. C. P. 453.

**1918.** Such has been the ruling to the present time. Hence, when the stipulations of the policy call for this *certificate*, it is as absolutely essential that *all* of its requirements, singly and collectively, be complied with, as with any of the other covenants of the contract.

The form of the original clause, though unchanged in the main, has been modified and restricted, being confined to magistrates, notaries public, and parties authorized to administer oaths. Hence, it is known simply as "the certificate of loss," "*the magistrate's certificate*."

**1919. REQUIREMENTS OF THE CERTIFICATE.**

1. Must be under SEAL.
2. Of the "NEAREST" magistrate or notary public.
3. Must not be a RELATIVE OR CREDITOR of the claimant.
4. He must have examined the circumstance of the loss, and must know the CHARACTER AND CIRCUMSTANCES of the insured.
5. Must state the AMOUNT of the loss to the best of HIS OWN BELIEF or knowledge, without reference to the amount stated in the proofs.

**1920.** The other points connected with the certificate are :

6. In case of REFUSAL of the *designated* magistrate or notary to make the certificate.
7. The TIME within which the certificate must be produced.
8. When the requirement may be WAIVED, actually or by implication.
9. When there may be DEFECTS in the certificate offered.

The following are some of the rulings of the courts upon this certificate :—

**I.—THE SEAL.**

**1921.** A neglect to object to a certificate on account of the omission of the magistrate's or notary's *seal*, is held, in New York, to be a waiver of objection. (**125.**)

*Mason v. Ins. Co.*, 17 U. C. Q. B. 191; *Scott v. Prov. Ins. Co.*, Stuart L. C. App. 354; *Maun v. West. Ass. Co.*, 19 U. C. Q. B. 190; 25 Wend. N. Y. 379.

**II.—THE NEAREST MAGISTRATE OR NOTARY.**

**1922.** Distances would not be nicely calculated to ascertain who was the *nearest* magistrate, where the one signing was near by and was acquainted with all of the circumstances.

*Shanno v. Ins. Co.*, 25 U. C. Q. B. 380; *Lans v. Ins. Co.*, U. S. C. C. Ills., 1880; 5 Sneed Tenn. 139; 9 Wend. N. Y. 163; *Turly v. Ins. Co.*, 25 *id.* 374; 3 Comst. N. Y. 122; *Longhurst v. Ins. Co.*, U. S. C. C., D. Iowa, 1881; *Ins. Co. v. Whitehill*, 25 Ill. 466.

**1923.** On the other hand, *any* difference in point of distance from the place of loss between the residences of the magistrates is "*material*," being made so by the express terms of the contrator

the jury were *bound* to regard such difference in distance as *material*, without further inquiry on the subject.

Distance may be determined by the *place of business* of the magistrate or notary.

*Lampkin v. West. Ass. Co.*, 13 U. C. Q. B. 237; *Ketchum v. Prot. Ins. Co.*, 1 Allen N. B. 136; *Racine v. Equitable Ins. Co.*, 6 L. C. J. 899; *Protection Ins. Co. v. Pherson*, 5 Ind. 417; *Moody v. Ins. Co.*, 2 Thompson N. S. 173; *William v. Queen Ins. Co.*, U. S. C. C. Conn., 15 Ins. Law Jour. 26.

**1924.** Where the first certificate from the *nearest* magistrate was found deficient in form, two others were procured, correct in form, but from magistrates living at a greater distance from the fire than the first magistrate: **HELD:** Not to be a compliance with the requirement, and the insured could not recover. (*Noonan v. Hartford Ins. Co.*, 21 Mo. 81.)

### III.—CREDITORS OR RELATIVES.

**1925.** Where two magistrates, *creditors* of the insured, were *NEARER* to the fire than a third whose certificate was obtained. **HELD:** To be a sufficient compliance. (*Ætna Ins. Co. v. Miers*, 5 Sneed. Tenn. 139; *Wright v. Hartford Ins. Co.*, 36 Wis. 522; 4 Ins. Law Jour. 251; *Ketchum v. Protection Ins. Co.*, 1 Allen N. B. 136.)

Where a magistrate or notary certifies that he is not interested in the case, the onus of proving such interest lies with the underwriters. (*Cornel v. Leroy*, 9 Wend. N. Y. 163.)

### IV.—THE CHARACTER OF THE CLAIMANT.

**1926.** This clause of the condition is complied with by a certificate to the *character* of the insured, "as learned from information and personal knowledge."

### V.—AMOUNT OF LOSS.

**1927.** Under the provision of the policy requiring that the certificate shall state that the magistrate knows and believes that the insured has really and by misfortune, without

fraud, sustained loss *to the amount therein mentioned*, HELD :  
 "It was a condition precedent to recovery that the certificate should state the *amount* of loss."

*Mason v. Andes Ins. Co.*, 33 U. C. C. P. 37; *Scott v. Phoenix Ins. Co.*, Stuart P. C. C. 354; *Alderman v. W. Eng. Ins. Co.*, 5 U. C. K. B. 37; *Mann v. West Assur. Co.*, 19 U. C. Q. B. 190; *Langel v. Ins. Co.*, 17 U. C. Q. B. 524; *Germania Life Ins. Co. v. Curran*, 8 Kans. 9.

**1928.** If the certifying magistrate believes the loss to be more or *less* than the sum claimed by the insured, and certifies to an amount which he believes to be correct, it will be full compliance, even if such specified sum be but a nominal one. It rests upon the insured to prove the amount of his loss to the satisfaction of the underwriter; and this can be done by other evidence bearing more directly and particularly upon this point. The magistrate cannot, under ordinary circumstances, know anything about the *value* of the property lost.

**1929.** The policies in use in the city of New York, about A. D. 1800 to 1825, contained the following as part of the certificate, which is much more satisfactory and explicit; and if any dependence is to be placed upon this certificate, it should be again brought into use :—

"That he has examined into the cause of fire and loss; and his opinion thereon, *together with the affidavit or affidavits annexed thereto of such person or persons as shall be examined before him in relation to such fire and loss*, stating the circumstances as nearly as possible, how such fire happened, and the *amount of the loss* such person hath sustained thereby."

#### VI.—REFUSAL TO CERTIFY.

**1930.** It will not unfrequently occur that magistrates will be found who will *refuse to certify* to any specified sum as the amount of loss, either from want of knowledge upon the subject or from the character of the claimant. This will not avail the insured, "for if a person engage for the act of a stranger, he must procure such act to be done," unless the refusal of such stranger be procured by the act of the other party. So, where a clergyman declined to certify to the amount of loss, solely upon the ground that he had no such knowledge of the value of the

property as would justify him in making such certificate, it was HELD *not* to be a compliance with the terms of the condition.

**1931.** HELD in England, and affirmed by the Supreme Court of the United States: "The production of the certificate required by the stipulation of the policy is a condition precedent to the payment of the loss, so that, if wrongfully, or from improper motives, it be *refused*, it will *not* excuse the want of it." (Columbia Ins. Co. v. Lawrence, 10 Peters U. S. 507.)

**1932.** Where the ministers and wardens (wrongfully, as held by the claimant) refused to sign the certificate, he produced a certificate signed by several householders instead:—

Held: That compliance with the requirements of the condition was a condition precedent, and that the *refusal* of the minister and churchwardens, whether right or wrongfully, was equally insufficient as an excuse."

Scott v. Phoenix Ins. Co., 1 Stuart L. C. Ap. 354; Alderman v. West, of Scot. Ass. Co., 5 U. C. K. B. 37; Routledge v. Burrell, 1 H. Bl. 254; Leadbetter v. Ins. Co., 13 Me. 265.

**1933.** Where the *nearest* two magistrates both refused to make the certificate, the insured procured a certificate from the *next nearest* magistrate: HELD: This did not entitle the insured to recover; and the procuring of the certificate of the *nearest* magistrate, answering the description in the policy, was a condition precedent that must be complied with before the insured could recover for the loss. (Leadbetter v. Ætna Ins. Co., 13 Me. 265.)

#### VII.—TIME OF PRODUCTION OF THE CERTIFICATE.

**1934.** The usual form of policy makes no requirement as to the *time* within which the certificate shall be forthcoming; though, from the context, it is supposed to accompany the proofs of loss as a part thereof. Under this condition the only requirements of the law in reference to its production is that it shall be within a "*reasonable time*." (1649.)

Continental Ins. Co. v. Lippold, S. O. Neb., 4 Ins. Law Jour. 430; Blakely v. Ins. Co., 20 Wis. 217; Inman v. Ins. Co., 12 Wend. N. Y. 452; Welcome v. Ins. Co., 2 Gray Mass. 430.

**1935.** Where a policy required that the insured should "as soon as possible thereafter give notice, etc.—make proof, etc., etc., and procure a certificate under the hand of a magistrate":

Held, by the Supreme Court of the United States: That "as soon as possible" could not be drawn down to fix the construction of the clause respecting the certificate; but the "certificate must be procured within a reasonable time after the loss." (Columbia Ins. Co. v. Lawrence, 10 Peters U. S. 507.

Johnson v. Ins. Co., 112 Mass. 49; Edgerly v. Ins. Co., S. C. Iowa, 5 Ins. Law Jour. 846.

**1936.** When a *magistrate's certificate* was required by the policy, and on notice and demand for loss made on 20th February, a question arose as to the insurer's interest, which was under discussion until 28th June succeeding, when the underwriters finally decided not to pay the loss:—

Held, by Chief Justice MARSHALL and associate: The discussion was not a waiver, on the part of the underwriters, of the condition for the production of the *magistrate's certificate*.

**1937.** Where a second set of papers was furnished by the insured, on account of defects in the first, and the question of time was raised:—

Held: "That the words 'as soon as possible' must be construed to mean within a reasonable time, under the circumstances; and it was properly left to the jury to say whether, considering the facts, the insured had complied with the condition by furnishing the second set of papers, and was not a question of law for the judge to decide." (Mann v. West. Assur. Co., 192 U. C. Q. B. 314.)

#### VIII.—WAIVER.

**1938.** Where the underwriters object to a certificate on another ground than that of not being the "nearest magistrate," it is held to be a *waiver* of objection to the certificate. (1151.) (O'Neill v. Buffalo Ins. Co., 3 N. Y. 122.)

Where the underwriter declared his intention of resisting the claim upon other grounds than insufficiency of the certificate, it was held to be a *waiver* of the right to object to the certificate, though not of that of the *nearest* magistrate. (Sims v. State Ins. Co., 47 Mo. 54.)

**1939.** The same general principle, as to *waiver*, operates in the requirements of this condition of the policy, as in "preliminary proofs" and "notice of loss."

#### IX.—DEFECTS.

**1940.** If the *certificate* be produced and the underwriters allege its insufficiency, they are bound to point out the *deficiency*; and, at the request of the insured, return the certificate to be amended; their neglect or refusal to do so will excuse the neglect of the insured to produce the amended *certificate*. (**1880.**) (*Dakin v. Liv. & Lond. & Globe Ins. Co.*, N. Y. C. A., 8 Ins. Law Jour. 517.)

Proof of insufficiency of the certificate is upon the company. (*Watt v. Gore Dist. M. Ins. Co.*, 9 U. C. C. P. 405.)

Upon this subject Chancellor WALWORTH says:—

"Too much on the part of the underwriters requires that, if they mean to insist upon a *formal defect* of this kind in the preliminary proofs, they should apprise the insured that they consider the same defective in that particular, or put their refusal to pay *upon that ground* as well as others, so as to give him an opportunity to supply the defect before it should be too late; and, if they neglect to do so, their *silence should be held a waiver* of such defect in the preliminary proofs, so that the same shall be considered as duly made, according to the conditions of the policy." (*Ætna Ins. Co v. Tyler*, 16 Wend. N. Y. 400.)

#### IRON SAFE CLAUSE.

**1941.** The following clause has been adopted for the security of the companies in the matter of books and accounts:—

"The assured, under this clause, hereby covenants and agrees to keep a set of books, showing a complete record of business transacted, including all purchases and sales, both for cash and credit, together with the last inventory of said business, and further covenants and agrees to keep such books and inventory securely locked in a fire-proof safe at night, and at all times when the store mentioned in the within policy is not actually open for business, or in some secure place not exposed to a fire which would destroy the house where such business is carried on; and, in case of loss, the assured agrees and covenants to produce such books and inventory, and, in the event of the failure to produce the same, this policy shall be deemed null and void, and no suit or action at law shall be maintained thereon for any such loss."

## BOOKS OF ACCOUNT.

## DUPLICATE INVOICES.

**1942.** *Condition of the policy.*—"The assured shall also produce their books of account and other vouchers, and exhibit the same for examination at the office of the company, and permit extracts and copies thereof to be made; the assured shall also produce *certified copies of all bills and invoices, the originals of which have been lost*, and shall exhibit all that remains of the property which was covered by this policy, damaged or not damaged, for examination to *any person or persons named by the company.*"

**1943.** This stipulation calls for a formal act over which the insured may have no control. He must, in support of his claim, furnish *his books of account and other vouchers as far as lies in his power*. A refusal to do so, or any concealment, bars his right of recovery. (**1599.**) (*Ins. Co. v. Nichols*, 16 N. S. 410.)

**1944.** "This requirement, however, creates no implied warranty on the part of the insured to keep books of account, and to be ready to produce them when called on; but it is to be construed as a stipulation to produce such books, if any, as he may be in the habit of keeping." (*Wightman v. Ins. Co.*, 8 Rob. La. 442.)

**1945.** "If there be such a *destruction of the books and vouchers* as prevents the insured from sending in a '*particular account*,' a general statement of the gross amount of the loss, and the circumstances attending it, *property verified may be sufficient.*" (**1427.**)

*Bumstead v. Ins. Co.*, 2 Kern. N. Y. 81; *Jube v. Ins. Co.*, 28 Barb. N. Y. 412; *Foster v. Ins. Co. Edm. S. C. N. Y.* 290; *Lion Fire Ins. Co. v. Starr*, S. C. Texas, 18 Ins. Law Jour. 873; *Ins. Cos. v. Weides*, 14 Wall. U. S. 373.

**1946.** "If the insured, *his books being burned*, estimates his loss in a preliminary proof, from a previous account of stock and subsequent purchases and sales, he should state not merely the result, but how he makes his estimates, so as to arrive at his results."

*Perry v. Niag. Dist. F. I. Co.*, 21 L. C. J. 257; *Graves v. Id.*, 25 U. C. Q. B. 127; *Scott v. Id.*, *id.* 119; *Mulvey v. Gore Dist. Ins. Co.*, *id.* 124; *Banting v. Niag. Dist. Ins. Co.*, *id.* 431; *Cameron v. T. & B. Ins. Co.*, 7 U. C. C. P. 234.

**1947.** When the conditions of the policy required the production of "*books of account and other proper vouchers*," the books having been burned, the company required certain invoices which the insured refused to produce, though within his power to do so. HELD, and affirmed upon appeal: "That, having failed to comply with the conditions of the policy, the insured could not recover."

Cinque Mars v. Equitable Ins. Co., 15 U. C. Q. B. 143. 246.

**1948.** Where the insured gave the names of parties, but refused to sign a request to those parties to furnish duplicates of the bills he had purchased of them. HELD: That such refusal did not prevent recovery. (Mispelhorn v. Ins. Co., S. C. Md. 9 Ins. Law Jour. 411; Franklin Ins. Co. v. Culver, 6 Ind. 137.

**1949.** Where the condition of the policy required loss to be verified by "*their books of account and other proper vouchers*," the books of accounts, etc., were burned, and could not be produced. The company demanded "duplicate invoices and the pass-books of journeymen," in which were entered the articles manufactured. HELD: upon appeal (Reversing 6 J. & Sp. N. Y. 517):—

"The condition was lawful, and a full compliance with it was indispensable to a right of action upon the policy, unless a compliance was impossible, or was waived by the insurers." (Citing Worsley v. Wood, 6 T. R. 710; Columbian Ins. Co. v. Lawrence, 2 Pet. U. S. 52; Jube v. Brooklyn Ins. Co., 28 Barb. N. Y. 412; Jennings v. Chenango Ins. Co., 2 Denio N. Y. 75; Savage v. Howard Ins. Co., 52 N. Y. 501; O'Brien v. Commercial Fire Ins. Co., N. Y. C. Ap.)

**1950.** When the condition of the policy stipulated that the claimant shall "produce certified copies of all bills and invoices, the originals of which have been lost, and exhibit the same for examination *by any person or persons named by the company*, and be examined," etc., and the company fail to name such person, they will have waived their right to require their production as a part of the preliminary proof.

Home Ins. Co. Conn. v. Cohen, C. A. Va., 20 Gratt. 312.

## BOOKS OF ACCOUNT AS EVIDENCE.

**1951.** *Books of account* of the insured are not evidence in themselves; they are entitled to no further weight than the proof of witnesses, who may be examined as to their accuracy, will justify; and derive no additional weight, as evidence, by reason of the stipulation for their production.

*State v. Hopkins*, S. C. Vt., 14 Ins. Law. Jour. 657; *Newmark v. Liv. & Lond. & Globe Ins. Co.*, 30 Mo. 160

**1952.** Where two day-books and a ledger, of a firm of two brothers, kept by themselves, having no book-keeper, and memoranda upon a fly-leaf of the ledger, made by one of the brothers from the annual inventories of stock for several years previous up to the last inventory prior to the fire, all properly testified to be correct by the parties who made the entries, were admitted in evidence, the inventories having been burned: HELD: "These entries were properly admitted by the court below." (*Weide Bros. v. Ins. Cos.*, U. S. S. C., 9 Wall. 677; 1 Ins. Law Jour. 767.)

"There can be no doubt but the day-books and ledger, the entries in which were testified to be correct by the persons who made them, were properly admitted. They would not have been evidence, *per se*, but with the testimony accompanying them all objections were removed." (4 Selden N. Y. 170.)

**1952a.** "When original entries are produced, and the person who made them, and knew them at the time to be true, testified that he made the entries, and that he believed them to be true, although at the time of testifying he had no recollection of the facts set forth in the entries, such evidence is admissible as *prima facie* evidence for the jury." (*Merrill v. The Ithaca and Oswego R.R. Co.*, 16 Wend. N. Y. 586.)

*Gary v. Mead*, 22 N. Y. Court of App. 465-6.

**1953.** Where a party seeking to introduce his *books of account* as evidence did not state that such books were of *original entries*, and that he made them, and that they were true; or that they were made by a deceased person, or a person then a non-resident of the state, and that such person made them in the due course of trade, and of his duty, or in the course of his employment; but, on the contrary, a witness states that he was clerk for the party, and sold part of the goods

sought to be recovered. HELD: "That the proper foundation was not laid to render the books admissible as evidence." (King v. Enterprise Ins. Co., 41 Ind. 45; *id.* 61.)

**1954.** A day-book, copied from a "blotter," in which charges are first made, is not to be received in evidence as "*a book of original entries.*"

### EXAMINATION UNDER OATH.

**1955.** *Condition of the policy.*—"The assured shall, if required, submit to an examination or examinations under oath by any person appointed by the company, and subscribe to such examinations when reduced to writing; . . . and until such proofs, declarations, and certificate are produced, and examinations and appraisals permitted by the claimants, the loss shall not be payable."

**1956.** When the proofs submitted are not satisfactory from any cause, the insured may be called upon to *reproduce* his books and vouchers, and be examined and *reexamined* under oath, and sign such examinations when reduced to writing upon subjects touching the loss, or the claim arising therefrom. The Lombard House Fire Ins. Co., A. D. 1767, was the first to cover the contents of buildings, and had a similar clause in its policy.

**1957.** This course will often bring out the facts in cases of exaggerated or fraudulent claims. Here facts, results, suspicions etc., discovered in the preliminary investigations will be found of material service, if properly filed for use. (**1604.**)

An examination of claimant before proofs of loss are submitted will waive the production of such proofs. (Badger v. Phoenix Ins. Co., E. C. Wis., 9 Ins. Law. Jour. 627.) So also, after a known breach of the policy. (Titus v. Glens Falls Ins. Co., 9 Ins. Law. Jour. 664.)

The claimant should be duly notified of the time and place of holding such examination, and of the name of the party authorized to examine (**1950**); any failure on his part to respond to the requirements of such condition will be at his peril.

Home Ins. Co. N. Haven v. Cohen, 20 Gratt. Va. 312; Williams v. Queen Ins. Co., U. S. C. C., 15 Ins. Law Jour. 26; Weide v. Ins. Co., 1 Dill. C. C. 441; Gross v. Ins. Co., U. S. C. C., D. Minn. 14 Ins. Law Jour. 158; Zeilke v. Ins. Co., S. C. Wis., 15 Ins. Law Jour. 62; Ins. Cos. v. Weide, 9 Wall. U. S. 677; Titus v. Glens Falls Ins. Co., C. A. N. Y., 9 Ins. Law Jour. 664.

**1958.** Where the insured, an insolvent debtor, had absconded, so that he could not be examined under oath as was desired, and a creditor attempted to sequester a portion of the amount claimed to be due under the policy in satisfaction of his debt. **HELD:** The failure of the insured to submit to examination under oath was fatal to the claim of the creditor as against the insurers. (Harris v. Phoenix Ins. Co., 35 Conn. 310.)

**1959.** Where an *examination under oath* was entered upon, and reduced to writing as far as taken, but not subscribed, and an adjournment for two weeks was had by agreement of the parties; and within which time the insured was called upon, but refused to answer further or to subscribe to those already given. **HELD:** "The refusal to complete the examination was unwarranted, and therefore by the express terms of the policy, the loss had not yet become payable. (Ponner v. Home Ins. Co., 13 Wis. 677.)

**1960.** Where the condition simply requires the insured "to submit to an *examination under oath*," **HELD:** Where the insured has submitted to *one* examination, although he afterwards refused to answer other questions under oath, the condition was complied with by the *one* examination. (Moore v. Protection Ins. Co., 29 Wis. 97.)

**1961.** The failure to respond to the requirements of this condition is mainly a question of fact and of intention. If it be to gain time and lessen the chances of detecting fraud, it would be fatal; but if to save the insured or his family from an epidemic, it would not. (Phillips v. Protection Ins. Co., 14 Mo. 220.)

## PAYMENT OF CLAIMS.

**1962.** *Condition of the policy.*—"To be paid sixty days after due notice and proofs of the same made by the assured, and received at this office in accordance with the terms and provisions of this policy, unless the property be replaced, or the company have given notice of their intention to build or repair the damaged premises; \* \* \* and until such proof, declaration, and certificates are produced, and examinations and appraisals permitted by the claimant, the loss shall not be payable."

**1963.** The adjustment of a loss is an admission that the insured is entitled to recover on the contract of insurance. It is simply a *promise to pay*, which is binding only when founded upon a previously admitted liability. Until the underwriter has paid the money or its equivalent, he is at liberty to avail himself of any defence which the facts or the law of the case will furnish. (1534.)

Doyle v. Phoenix Ins. Co., S. U. Cal. 1872.

## "SIXTY DAYS."

**1964.** The delay of *sixty days* is an additional safeguard for the underwriters against fraudulent losses, by giving longer time to investigate claims and decide whether to pay or contest them. In cases of undoubted honesty underwriters do not claim this delay, but pay upon the same terms as merchants transact their business, that is, interest off for prepayment. This is a comparatively modern stipulation; the early policies paid in *thirty days*.

**1965.** Under the above-cited condition preliminary proofs must be submitted to the company at least *sixty days* before commencement of suit.

Ames v. Ins. Co., 14 N. Y. 253; Ger. Am. Ins. Co. v. Hocking, S. C. Pa., 16 Ins. Law Jour. 546; Howard v. Ins. Co., 9 How. N. Y. 45; Allen v. Ins. Co., 19 Barb. N. Y. 442; Ins. Co. v. Rutledge, 7 Ind. 25; Hatton v. Ins. Co., 7 U. C. C. P. 558; Rice v. Ins. Co., 7 id. 548; Watt v. Gore Dist. Ins. Co., 8 Grant Chy. 523; Brown v. Ins. Co., 21 U. C. Q. B. 425.

**1966.** By this stipulation no agreement is made to pay in *cash*, or in money even, but simply "*to pay*," or, in other words, to *indemnify* the insured, reserving the option of reinstating the property lost, or paying in *cash*, as they may elect. But until the requisite proofs shall have been filed, the loss is not payable. (*Beals v. Home Ins. Co.*, 36 Barb. N. Y. 614.)

Under a parole contract, demand for payment can be made at once upon occurrence of loss. (*Ganser v. Fireman's Fund Ins. Co.*, S. C. Minn., 15 Ins. Law Jour. 555.)

## MONEY PAID UPON IMPROPER CLAIMS.

**1967.** After a loss has been paid, upon the discovery of fraud, misrepresentation, or concealment of material facts in the original contract; or should circumstances transpire which would have justified a resistance to the claim, but which the underwriter had no means of ascertaining at or prior to the time of payment, the money paid may be recovered; unless, in the absence of fraud, the payment was made under pressure of the law.

*McConnell v. Ins. Co.*, 18 Ill. 228; *West. Assn. Co. v. Towle*, S. C. Wis., 15 Ins. Law Jour. 241, and authorities cited; *Johnson v. Continental Ins. Co.*, S. C. Mich., 8 Ins. Law Jour. 362; 1 Term R. 343; 2 Ban. & Ad. 393; 2 Johns. N. Y. 157.

But where the insurer knew, or might have learned upon inquiry, all of the circumstances upon which the claim might have been resisted, in the absence of actual fraud, the money cannot be recovered. Such failure to avail himself of fraud or other legal defence must be clearly shown not to have arisen from his own default or negligence, but from innocent ignorance of such facts. It is not necessary that these facts, or the insurer's ignorance of them, should result from *moral* or *legal* fraud of the insured.

2 Marsh. Ins. 740; 2 East. 469; 1 Johns. Ch. N. Y. 320, 494; 3 *id.* 351; *Mut. Life Ins. Co. v. Wager*, 27 Barb. N. Y. 204.

**1968.** When a loss is paid under circumstances of *mistake of facts* and not of *law*, which mistake could only have been prevented by the disclosure, at the time of settling the

claim, of facts which were not disclosed, whether from ignorance or fraud on the part of the insured, or of any other persons with whom knowledge of the fact rested, such payment can be recovered.

**1969.** Payment made for loss under a policy afterwards discovered to have been *void* at the time of such payment, if the insurers were ignorant of the fact of such avoidance, payment can be recovered.

#### PAYMENT INTO COURT.

**1970.** "Payment of money into court when the declaration is on a special contract admits the contract indeed, so as to supersede the necessity of proving it at the trial (1 Tidd's Practice 625.) It is an acknowledgment of the right of action to the amount of the sum brought in; but, beyond the amount of the sum, it is no acknowledgment of any right whatever. (*ibid*, 624.) It waives the benefit of no defense, even though such defense be to the whole. It seems, therefore, that after payment of money into court, there may be a non-suit, a judgment as in case of a non-suit, a demurrer to evidence, or a plea *puis darrian continuance*; in short, that the cause goes on, substantially, in the same manner as if the money had not been paid in at all; in other words, the defendant is not precluded by it from making a defense which goes to the whole cause of action." (Elliott v. Lycoming Ins. Co., 66 Penn. St. 22.)

Such payment into court does not stop interest, however, unless paid in as a *tender* and with a plea of *tender*; and not then unless upon trial it is decided that no more is due than the amount tendered.

**1971.** Among the conditions of some of the Massachusetts mutual policies is the following, and it is held valid ---

"If the insured refuse the amount offered by the company and sues for more, he shall not recover costs unless he obtain a judgment for a sum greater than was tendered."

#### WHO MAY RECEIPT FOR MONEY PAID.

**1972.** When a policy is made in the names of several persons, or of a firm, any one of them can give a legal discharge and release of the debt in the joint names of the parties; but it

is customary and more proper to require a joint receipt from as many of the claimants as can be found to execute the same. (1976.)

**1973.** If a *release* be accepted without consideration, and without the surrender of the policy, the presumption might be that the payment was made to the wrong party. If it be claimed that the policy has been mislaid, lost, or burned, satisfactory evidence of such fact, and of the ownership of the contract, should be had before payment of the claim.

**1974.** Policies are frequently made payable to mortgagees or to an assignee with consent; or the garnishee process may have been served upon the company—all of these points should be particularly attended to before payment. (1435.)

#### DRAFTS UPON THE COMPANY.

**1975.** Agents should not close any claim by draft on their companies without special instruction to do so. They should draw for the amount of the claim, less the customary deduction for interest, when paid before maturity. Upon payment of the claim, the policy should be canceled by the insured's *receipt written across the face* for the gross sum paid, and forwarded to the parent office as a voucher. (2370.) (*Spooner v. Rowland*, 4 Allen Mass. 485.)

In case of partial loss only, the gross amount paid should be indorsed upon the policy in diminution of the amount remaining at risk for the unexpired time, and a duplicate receipt taken and forwarded to the parent office as a voucher for the payment.

Where the policy has been lost, or mislaid, so that it cannot be found upon payment of loss, a release in accordance with the fact should be taken, in duplicate, and forwarded as the voucher.

## ACCORD AND SATISFACTION.

**1976.** It sometimes becomes necessary to compromise a claim, when nothing better can be done. In such cases, an *accord* and *satisfaction* are agreed upon, which signifies in law, that in place of payment of money owing, a certain sum shall be, and *is at the time* paid and accepted in discharge of the debt.

2 Philips Ins., § 1316; 2 Johns. N. Y. 151, 232; Gaine v. Y. 3; 2 Camp. 319. Potter v. Ins. Co., S. C. Me., 4 Ins. Law Jour. 463; 4 Ins. 543; Smith v. Glens Falls Ins. Co., N. Y. C. A., 4 Ins. Law Jour. 708.

The following decisions of the Supreme Court of Alabama will explain the intention and force of such an agreement: —

1. "Where a debtor pays the principal of his debt, which is received by the creditor, in full satisfaction, whether the debt be past due or running to maturity, it is a good defense, and may be pleaded as an *accord and satisfaction*."

2. "A compromise made in good faith, and without fraud, where the debtor is in doubtful circumstances, by which a less sum than the whole debt is received by the creditor in *satisfaction*, the debtor is thereby discharged from all further liability."

**1977.** CONSIDERATION.—"When the parties have fixed the consideration, and stated it in the contract, as part of the agreement, this precludes an inquiry into the question of a failure of consideration, unless there be fraud, misrepresentation or deceit."

## CONTESTED CLAIMS.

**1978.** There is always more or less prejudice against an insurance company which may feel compelled to litigate a claim deemed fraudulent; yet no other class of incorporated institutions has so often to deal with sharpers and scoundrels, who regard underwriters as fair game for their practice, and whose claims are not unfrequently so exorbitant and glaringly fraudulent as to render resistance a matter of moral obligation as well as of self-preservation. (1628.)

Lee v. Guardian Life Ins. Co., U. S. C. C. Cal., 5 Ins. Law Jour. 26; Thompson v. Knickerbocker Life Ins. Co., U. S. C. C. Ala., 5 Ins. Law Jour. 823; Linz v. Mass. Mut. Life Ins. Co., U. S. C. C. St. Louis.

**1979.** OAKLEY, C. J., remarked in this connection:—

“That of all the cases of contests upon insurance policies ever tried before him, he had no doubt that at least two-thirds were rightfully resisted for *fraud* on the part of the insured.”

**1980.** When mere questions of law arise, and the matter can be submitted for the decision of the courts without the intervention of juries, the underwriter may stand an equal chance with the insured. But until our judges become better underwriters than many of them now prove themselves to be by their decisions, insurance companies will find it to their interest to continue to compromise doubtful and unpromising claims, rather than run the risk of heavy court and lawyer's fees, in addition to the payment of the claim at the termination of a vexatious law-suit.

**1981.** It has become so much a matter of course for juries to find for plaintiff, where the defendant may be an insurance company, that the following “*caution*” by Judge MORRISON, in the case of *McMillan v. the Gore District Insurance Company*, reads refreshingly:—

“The jury are cautioned not to favor the plaintiff because it is a company that is defending the case. They should deal with the matter as though it were two men that were concerned. If the jury found that there were any false swearing or attempt at defrauding the company on the part of plaintiff, then he would lose all claim to any part of the insurance, and a verdict should be given for defendant. It was necessary that the laws should be so framed that there would be some check to prevent dishonest men from getting their property insured above its value and burning it to make gain.”

## CONTRIBUTION.

**1982.** *Contribution*, in fire insurance, is the *pro rata* payment made, or to be made, by each underwriter in satisfaction of his *contributive liability* upon an accrued general loss, either to the policy holder directly, or, in absence of the *contribution clause*, to make good the amount advanced by one or more of the companies for the common benefit.

Bunyon Ins. 130; Pendleton v. Walker, 4 Y. & C. 441; Marsh. Ins. 116, 117.

**1983.** *Contribution* is operative only between co-insuring companies, and in cases of double insurance where *the liability is joint*. The insured may recover from either contributing party to the full amount of his loss within the insurance, subject to the right of contribution from the other companies; whereas, under the *contribution clause*, the liability of co-insurers becomes *several*; should one company knowingly pay more than its share, recourse cannot be had upon the others, as *contribution* can only be enforced when the party paying was under legal obligation to pay.

Gordon v. Lond. Assur. Corp., 1 Burr. 492; May Ins. 12; Cromie v. Ins. Co. 15 B. Monroe Ky. 432.

**1984.** *Contribution* assessed upon the insured is in the nature of general average in marine insurance, which does not operate in fire insurance.

Policies subject to average, or excess policies, are, by their specific terms, exceptions to this rule.

Fitzsimmons v. Ins. Co., 18 Wis. 234; Lucas v. Ins. Co., 6 Cow. N. Y. 635.

**1985.** It is a general principle that losses under fire policies are to be paid *without contribution from the insured*, unless otherwise specified.

**1986.** By the introduction of what is known as the *contribution clause* into the fire policy, "*proportional abatement*" has been substituted for the old form of *contribution*, which latter is now operative only in exceptional cases, where *ratable apportionment* is not provided for by the terms of the policy.

**1987.** "The principle of contribution has its foundation in the clearest principles of natural justice; for, as all are equally bound and equally relieved, it is obviously but just that, in such case, all should contribute in proportion toward a benefit obtained by all. Any other rule in case of double insurance would put it into the power of the assured to select his own victim and, upon motives of mere caprice or favoritism, to make a common burden a personal oppression." (Angell Ins. 142, § 88.)

**1988.** Without *contribution* between insurers the policies would have to be exhausted in the order of their dates—the earlier not being competent to inquire concerning any subsequent insurance. (**41, 68, 1990.**)

**1989.** Prior to the introduction of the contribution clause into the fire policy, it was customary, under the operation of the contribution feature, for an office having the largest amount at risk on any general loss to proceed to the adjustment, and pay the claimant in full, collecting a *ratable* share from each co-insuring company. It was quite common for the insured to select the company having the largest interest at stake, and collect the entire amount of the loss, leaving such company to look to its co-insurers for *contribution*. (**2045.**) The adjusting company thus becoming a guarantor for the others.

Newby v. Reed, 1 W. Bl 416; 1 Park. Ins. 289; Bunyon Ins. 130; Cromie v. Ins. Cos., 15 B. Munroe Ky. 432; Shaw's Ellis Ins. 52; Thorston v. Koch, 4 Dall. Texas 348; Wiggin v. Ins. Co., 18 Pick. Mass. 145; Beawes Lex. Merc. 242.

**1990.** By the French rule, policies are exhausted in the order of their dates; and such was formerly the English rule. Many of the modern policies have as a portion of the contribution clause the words "without reference to the dates of such other policies," and thus compel contribution.

In marine insurance payment is made in the order of dates and subscriptions, both in England and in America. In this latter country there is to be found a condition that the policies are to be applicable only to the excess of value of the subject over the amount insured by prior policies; and in respect to subsequent insurances, the policy is to be applied as if no such insurance had ever been made."

1 Phillips Ins. 26, 32; Ins. Co. v. Griswold, 14 Wend. N. Y. 399; Brown v. Hartford Ins. Co., 3 Day 58.

Under this clause there can be no contribution.

## CONTRIBUTION CLAUSE.

**1991.** *Condition of the policy.*—"In case of any other insurance upon the property hereby insured, whether made prior or subsequent to the date of this policy, the assured shall be entitled to recover of this company *no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon.*"

**1992.** The introduction of the *contribution clause* as a stipulation of the fire policy is of comparatively modern date, resulting from the necessity for some definite provision whereby the amount to be collected from each co-insuring company should be limited to its *ratable proportion* only of an ascertained general loss, instead of permitting the assured, at his option—the liability under double insurance being joint—to select any one company to pay the entire loss, and leave such company to look to co-insurers for contribution. (1983.)

*Pendlebury v. Walker*, 4 Y. & C. 441; *Bunyon Ins.* 130, 136; *Quarrier v. Ins. Co.*, C. A. W. Va., 6 Ins. Law Jour. 741; *Harris v. Ins. Co.*, Wright 548; *Lucas v. Ins. Co.*, 6 Cow. N. Y. 635; 1 Benn. F. I. Cases 173; *Stacey v. Franklin Ins. Co.*, 2 Watts & S. 506, 2 Benn. F. I. Cases 109.

"To avoid this circuity of action, this clause was introduced, by which the double office of recovery and contribution is performed in a single action; *the insured being allowed to recoup the same amount which he must formerly have recovered over against those who stood by his side.*"

"This clause, it seems, has not always been received with perfect favor. But no question has ever been made that this and like clauses in policies must have effect when the case for which they provide already exists. (*Lucas v. Ins. Co.*, 6 Cow. N. Y. 635.)

**1993.** The *contribution clause* is variously worded; but its adoption, in some form more or less appropriate for the purpose, has now become general among underwriters. Its effect is to clearly define and limit the *contributive liability* of each co-insuring company to its *ratable proportion* only of the loss under any circumstances. "It was intended to prevent fraud, and also, from being insurers for each other, which is the effect of recovering from any one company, without regard to date, and leave him to claim contribution," (*Stacey v. Ins. Co.*, 2 Watts & S. Penn. 506.)

**1994.** When there may be policies of several companies interested more or less concurrently on the same loss, some of which contain this clause and others do not, the apportionment of *contributive liability* will be more or less complicated, as there is great diversity of opinion and practice among underwriters as to how compound non-concurrent policies should be made to contribute with specific insurance upon the same loss.

**1995.** To a want of uniformity in construction and application of this clause, and to the different constructions given to their several policies, as to the liability of the companies, by the respective adjusters, may be attributed the greater portion of the difficulties met with in the apportionment of contributive liability upon ascertained losses among non-concurrent policies. This misapplication of the *contribution clause* arises from want of familiarity with the peculiarities of compound policies and their relations to specific insurances in contact upon the same loss. (2071.)

**1996.** The contribution clause, like contribution under the old form, is held to be operative *only between the companies, in case of double insurance*, and between the policies containing it; and then *only when the concurrent insurance exceeds the general loss*.

**1997.** When the general loss exceeds the amount of *insurance concurrent* or non-concurrent, the clause is held inoperative, each company paying according to its contract; the effect of the clause being simply to define and limit the contributive liability of co-insurers in partial losses, to such *ratable proportions* of loss amounts as the respective policies may bear to the whole amount of *valid concurrent* insurances. The interest of the *policy-holder* is in no way limited thereby, except to debar him from calling upon any one underwriter for the full amount of the loss, as he might do in the absence of the stipulation. (1992.)

Ogden v. East River Ins. Co., S. C. N. Y., 2 Ins. Law Jour. 184; Rule iv. 2126.

**1998.** The liability of co-insuring companies under this clause is *based upon the degree of concurrency of the policies*

and is restricted to the *ratable proportions of the loss*, within the amount of *the concurrent insurance*; though some of the policies may cover other property in addition to that destroyed, or protect *specific* items not embraced in any of the others. (2071.)

Conn. F. I. Co. v. Mer. & Mech. Ins. Co., 8. C. A. Va., 15 Ins. Law Jour. 615.

**1999.** It is a necessary incident to the existence of such liability that the several insurances shall be bound with equal certainty, and in the same sense for the same loss.

Ins. Co. v. Loney, 20 Md., 20, 4 Benn. F. I. Cases 646

"The sums subscribed may be, and often are, different; but none of the numerous books cited show that the right of contribution has ever been supposed to arise without the subject-matter insured *being exactly the same* in each policy." (6 Cowen, *supra*; 5 Hill N. Y. 298.)

*Nor can any one policy take precedence in claiming contribution from or at the expense of the others.* (2016, 2194, 2213a.)

**2000.** The claim of each contributing policy upon the others *is of equal force*, without regard to the amount or the specific stipulations of any one policy not contained in or recognized by the others, such stipulations being operative only between the company and its policy-holder.

Millaudon v. Ins. Co., 9 La. 27, 1 Benn. Ins. Cases. 567.

**2001.** The various forms of this clause herein cited, will be :—

- |                                     |                  |
|-------------------------------------|------------------|
| I. THE ENGLISH.                     | III. THE GERMAN. |
| II. THE FRENCH.                     | IV. THE HAMBURG. |
| V. THE AMERICAN, OR NATIONAL BOARD. |                  |

#### I—THE ENGLISH CONTRIBUTION CLAUSE.

**2002.** "In case of the existence of any other insurance or insurances on the property covered hereby, this company shall be liable only to pay a *ratable proportion* of any loss or damage, which may be sustained, along with the office or offices interested."

Bunyon Ins. 130; Hore, Adjustment of Fire Losses 101.

**2003.** Inasmuch as the *contribution clause* inures solely to the benefit of the companies, as between themselves, it is HELD, that—

“In no case must this clause be construed in such a manner as to throw loss upon the insured, against which he would have been fully protected had his policies been free from the clause.” (2045.)

Buylon Ins. 130 ; Hore, Adjustment of Fire Losses 28.

**2004.** Although this clause is found in all English policies, specified or average, it is virtually ignored in practice by the preponderance given to *average* policies, which, despite the *contribution clause* in both classes of the policies, limiting the liability of the office to its *ratable proportion* only of any loss, compels such specific policy to pay to its full extent before the average policies will contribute. (2161.)

“There seems something incomprehensible in two policies covering, in a computable proportion, the same risk, one of which must stand the brunt of the loss until its amount be exhausted, before the other comes into operation for any fraction of its responsibility; and surely, it is worthy the best efforts of all connected with insurance business to endeavor to establish a more equitable system—one more in unison with a correct appreciation of sound doctrine.” (2264.) (R. Atkins, “The Average Clause.”)

## II—THE FRENCH CONTRIBUTION CLAUSE.

**2005.** “Should there be several insurances, the company, in case of fire, shall bear its proportion of the loss adjusted according to the present policy.”

This clause, though much more laconic, is to the same effect as the English; the company will pay its *proportion of the loss*.

## III—THE GERMAN CONTRIBUTION CLAUSE.

**2006.** “If the property shall be insured in several companies, then this company will bear its share of the loss in proportion to the other amounts insured, and in accordance with the conditions of the present policy.”

The import of this stipulation is that the company will pay its share of any loss with co-insurers, in proportion to the other amounts insured; but such share is not restricted to the *pro rata sum* as the amount of its policy may bear to the aggregate insurance.

## IV—THE HAMBURG CONTRIBUTION CLAUSE.

**2007.** "If the insured property, in part or in whole, is elsewhere insured, or if the value of the property on hand at the time of the fire exceeds the amount of insurance, or if any self-insurance condition on the part of the insured is expressly specified, *then the damage will be made good pro rata*"

This form includes the average clause, whether expressed or not, and compels contribution from the insured as under that clause. The company then pays its *pro rata* share of the loss with the other contributors. It is virtually the average clause common to all Continental policies.

## V—THE AMERICAN CONTRIBUTION CLAUSE.

**2008.** *Condition of the policy.*—"In case of any other insurance upon the property hereby insured, whether made prior or subsequent to the date of this policy, the assured shall be entitled to recover of this company *no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon.*"

**2009.** It is a noticeable feature in the history of the *American contribution clause*, when first used in the policies of the New York city companies, about A. D. 1806, that while in the body of the policy the present form is to be found almost verbatim, yet at the same time the following is found among the "conditions of insurance" of the same policies; and it so continued until after the great fire in New York, A. D. 1835

"But in case of loss, each party insuring shall be liable to the payment of *a ratable proportion of the loss or damage which may be sustained.*"

These two forms are quoted by Mr. FINN, A. D. 1842, as then in use, and he treats them as separate propositions. (2219.)

**2010.** In A. D. 1836, we find in common use among the companies the following stipulation:—

"And in all cases of insurance this company shall be liable for such *ratable proportion* of the loss and damage happening to the *subject insured*, as the amount insured by this company shall bear to the whole amount insured *thereon*, without reference to the dates of the different policies."

**2011.** About A. D. 1860, the following form was used by some of the companies:—

If, at the happening of any fire, the assured shall have insurance under a floating policy or policies, not specific, but covering goods generally, in various places not designated, and yet within limits which include the premises or property herein insured, such policy, as between the assured and this company, shall be considered as covering any excess of sound value of the subject insured, beyond the amount covered by the specific insurances thereon; and to determine the amount for which this company is liable in case of loss, such floating policy shall be considered an insurance on the property to the extent of such excess." (*Merrick v. Germania et al. Cos.*, 54 Penn. St. (4 P. F. S.) 277.

**2012.** The effect of this stipulation will be found fully explained under RULE V. (2130.) It remained in use until the promulgation of the NATIONAL BOARD form of the *contribution clause*, the effect of which, under certain circumstances, is to compel the insured to bear portions of the loss; thus totally subverting the original intent and purpose of contribution, by making the clause operative between the company and the insured, when it was intended simply for the relief and accommodation of the companies themselves, "*the insured being allowed to recoup the same amount which he must formerly have recovered over against those who stood by his side.*" (1992. 2041.)

**2013.** The uncertain wording of this National Board clause has given rise to considerable discussion as to its true meaning and effect upon the contributive liability of non-concurrent policies.

(1.) The advocates of the FINN RULE (2109) and the ALBANY RULE (2114) construe the stipulation to be a positive contract, binding upon the insured as well as the co-insuring offices, in all cases, whether of partial or total loss.

(2.) While others hold that the words "*no greater proportion of the loss sustained*" are simply equivalent to "*ratable proportion*" (2050) in the English form, and refer to the total contributive liability of the policy, whatever that sum may be.

(3.) Others again contend that inasmuch as the *contribution clause* is operative only in cases of partial loss, the words "*amount hereby insured*" are equivalent to "*ratable proportion*," and refer to the loss which brings the clause into opera-

tion, and not to the amount insured against some merely possible total loss, where the clause would be inoperative.

**2014.** As a clause, in form obnoxious to so many conflicting constructions, does not convey a correct idea of *contribution* as sanctioned by long usage, precedent or legal assent, and as tending, in its present form, to narrow the force and limit the range of the principal obligation of the insurance contract, *i. e.*, *indemnity*, especially in cases of total loss where contribution necessarily becomes inoperative, our courts have in numerous and strikingly harmonious rulings decided adversely to its validity in all cases.

**2015.** Yet, while holding as a fundamental principle the paramount obligation of a company to be the *payment of the whole loss* under its policy, or, in case of double insurance, such relative share thereof as the *concurrence of the several policies* may indicate to be the *ratable proportion* of each, to make the indemnity complete. The courts further recognize the competency of companies to limit or restrict their liabilities by *special stipulations* "not repugnant to the nature of the contract." (178.) Such, for instance, as the well-known *average clause*; a principle which, though not considered inherent in *fire* underwriting, as it is, from the force of long usage, in the marine branch, is nevertheless recognized as valid and binding when made a condition of the policy. (366).

**2016.** The operation of the *contribution clause* limiting the liability of the office to such proportion only of the loss as the amount of its policy may bear to the aggregate concurrent insurance upon the same subject, and in partial losses only, becomes of the nature of *general average*, the legality of which properly applied, has never been questioned; but when forced in cases of *total loss*, where there can be no contribution among co-insurers, it is a misapplication of the principle, which cannot fail to work injustice to the parties interested, and hence becomes illegal. (2041.)

**2017.** Since the first promulgation of the NATIONAL BOARD form of policy the following has been added:—

"And it is hereby declared and agreed that, in case of the assured holding any other policy in this or any other company on the property insured, subject to the conditions of average, this policy shall be subject to average in like manner."

*Liv. Lond. & Globe Ins. Co. v. Verdier et al.*, 8. C. Mich., 5 Ins. Law Jour. 664; 6 *id.* 202.

**2018.** This stipulation is taken from the English policies, where it was introduced to meet and counteract certain objectionable features in the practice of loss adjustments, where average policies are in contact with specific, whereby these latter are to be first exhausted before the former can be called upon to contribute. (2161.) Under the operation of this stipulation all of the policies become subject to average, and consequently to the same liabilities in the adjustment.

Its introduction into the policies of this country was evidently with a view to meet the operation of the average conditions of floating policies of English agency companies, which result it effects *only at the expense of the insured*.

**2019.** In English practice the average policy is held, under any circumstances, only for its *pro rata amounts* of loss, and the specific policies make up any deficiency in the loss within their respective amounts. Hence, if the contribution clause is construed to mean that the specific policy must make up any deficiency arising from the operation of the average clause in a co-insuring policy, then the clause making specific policies subject to average, when in contact with average policies, is quite as legal and equitable as such a construction would be. (2004, 2264.)

**2020.** "Where there are several policies containing the contribution clause, they are all and each *liable to pay to the insured such ratable proportion*, though it may happen that some one or more of them may have been voluntarily compromised and paid to an amount exceeding the legal share—and even though enough to cover the whole loss; and this, whether such companies had knowledge of all of the policies existing at the time or not."

*Fitzsimmons v. Ins. Co.*, 18 Wis. 234; *Bunyon Ins.* 131, 133.

**2021.** "There is no contribution between companies where policies contain this clause. If any one company pay more than its pro rata share, its remedy is against the insured. Over payment by one company is no defense to an action on another policy with this clause." (5 Hill N. Y. 298.)

**2022.** By a parity of reasoning, should any company pay *less* than its *ratable proportion*, as is frequently the case, such deficiency cannot be collected from the other companies: the *insured must look to the delinquent company for its ratable proportion of the loss.* (1998 *et seq.*)

**2023.** "When, however, there are several policies, some of which do and some do not contain this clause, and those *not containing* it pay to the extent of their subscriptions—which may be more than their pro rata share, this will be a defense for so much in an action on those policies containing the clause. If the policies without the clause have paid enough to cover the loss, it is a complete defense for the others, as to the insured, for they are liable to contribute to those companies which have paid, to equalize the loss." (Lucas v. Jefferson Ins. Co., 6 Cow. N. Y. 655.)

**2024.** "The onus of proving affirmatively that such other policies *did not contain* this clause, lies with the company so asserting."

#### ADDITIONAL STIPULATIONS.

Some policies contain the following additional stipulations:—

**2025. I.** "Without reference to the *solvency* or the *liability* of other insurers."

Such a provision as to the policies of *insolvent* companies is unnecessary, as the insolvency of a company does not invalidate its policy; and all *valid* policies must be held to contribute, as between the insured and the insurers, to their full amount, whether the company be solvent or not. (997. 1002.)

The provision compelling contribution from co-insuring policies in their whole amounts, without reference to their several *specific liabilities*, is, in its logical result, the *Albany Rule.* (2114.)

**2026. II.** "Any floating policy attaching, in whole or in part, to the property covered by this policy, shall, as between the insured and this company, be considered as contributing insurance to the *full* amount of such policy, and liable as such to pay *pro rata* any loss, total or partial, on the property hereby insured."

This is the above-cited condition (2025) extended, and is equally doubtful, as between co-insuring companies, for no policy can be called upon to contribute to a general loss beyond its true *ratable* proportion of the concurrent liability (2062); and there are cases in every-day practice where a floating or general policy may become exhausted in the payment of its own *specific* liability (307, 2084), so as to be unable to respond to any further assessment with concurrent insurance upon other subjects. (1999.) This stipulation is modified, however, by the words, "*as between the insured and this company,*" which releases the co-insuring policy from all but its *ratable* proportion of the concurrent insurance after payment of its own *specific* liability (2371), if any, and throws the consequent deficiency in contribution upon the insured. The legality of such proceeding is, at least, questionable, as the insured is not liable to contribute unless made so by express terms of the policy.

It was formerly customary in England to adjust under a similar clause *as between the companies*. Mr. CHRISTIE, then of the *Sun Fire Office*, says of it—

2027. "It was only a few years ago since an office was called upon to pay the amount of its loss (not exceeding the sum insured), *on items not mentioned in the specification of another policy*, as well as its share of the loss on the item insured by both policies, in the proportion of its *total* liability. But it is now considered more reasonable that the loss of the former should be first ascertained and deducted from the amount of the policy, before adjusting the proportion to be paid on the item to which both policies extend." (2081.) (Lond. Assur. Mag., 1859.)

This is in accordance with the rule for compound policies, Class II. (2213a.)

2028. III. "All policies, *valid* or otherwise, shall contribute," etc

This stipulation has not been sustained in *all* cases; especially where policies were *void* at the time of issuing the policy containing such clause; or, when rendered *void* by issuing such policy. But, if the policy be *voidable* only, it will be held to contribution as "other insurance." (997, 1002 for authorities.)

**2029.** IV. "All other insurance, in the same or other companies, whether by the same or other parties or persons having joint or separate interests in such property," etc.

This condition is found in English policies, and occasionally in this country. It renders liable to contribution all policies upon the same interests, as mortgagees, vendors, tenants, lessees, and others similar—steam-boiler insurance in mills included—which are not held as concurrent insurance with direct policies. (1848.)

Such stipulations are evidently legal; and their presence in the policy would not only remove a great temptation to incendiarism arising from heavy collusive over-insurance upon the same property by holders of different interests, but would, in honest cases, prevent the making of several payments to as many parties, each to the full value, for the same loss. The only drawback would be, in cases of non-compliance, where the insured might plead want of knowledge of or control over such other interests.

#### LEGAL CONSTRUCTION OF THE CLAUSE.

**2030.** As the courts are the "last resort" in contested cases, and their decisions final, hence, the following *rulings* are cited in support of the foregoing interpretations as to the true intent and operation of the contribution clause.

**2031.** Opinion by GRAHAM, President Judge, *Ninth Judicial Circuit, Penna.*, which covers the entire ground at issue as to the construction of the *contribution clause*, in opposition to the adherents of the ALBANY and similar rules, citing some of the principal authorities upon the subject.

The plaintiff covered in the Perry County Mutual Fire Insurance Company a house valued at \$4,000 for \$2,666, two-thirds of the valuation. The plaintiff afterwards took other insurance in the York County Insurance Company \$1,000, due notice being given of such additional insurance. The building was subsequently totally destroyed by fire.

Phillips v. P. C. M. Ins. Co., 7 Phila. 673.

The defendant company's policy contained the following provision:—

"In all cases of other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, in case of loss or damage by fire, the insured shall not be entitled to demand or recover on this policy any greater portion of the loss or damage than the amount hereby insured shall bear to the whole amount insured on said property."

**2032.** The Court say:—

"The only question presented is: What amount the plaintiff is entitled to recover on his policy? The plaintiff claims the amount insured, \$2,666. The defendant alleges that the plaintiff can only recover \$1,938.77, or at most, \$2,443." \* \* \* "The amount insured in both companies is but \$3,666, so that the whole insurance does not amount to the loss of the assured. But under the proviso in the policy of the defendant, its counsel contends that the company is only liable to pay a pro rata on the \$2,666 insured by it, and the pro rata to be ascertained thus: As \$1,000, the loss, is to \$3,666, the whole amount insured, so is \$2,666, the insurance by the defendant, to the amount it is liable to pay under the proviso. This would reduce the liability of defendant to \$2,443.38. *The result thus produced would be unjust and inequitable.* The assured gave his premium note for \$2,666, paid his assessment on that sum, received his policy insuring that amount, and although he has sustained a loss exceeding the insurance in both companies, the defendant denies his liability to pay the sum insured. *The proviso in the policy was not intended to work so great a wrong.*"

**2033.** "The clause in question was intended to prevent circuity of action, and is only applicable where double insurance exceeds the loss of the assured. Where there is double insurance without this clause, the assured can proceed against any one of the underwriters, if the insurance is sufficient, and recover the whole loss, and the defendant then would have his action against the others for contribution. To avoid this the clause in question is very generally introduced in policies; and, in case of double insurance, prevents the recovery of more than a pro rata share of the loss. *It substitutes proportional abatement for contribution in all cases in which the latter would otherwise have been required by common law. Anything short of indemnity would not be just to the assured.*"

\* \* \* \* \*

**2034.** "I find it very clearly ruled in cases of double insurance, whether with or without the clause in plaintiff's policy, that in no case can the assured recover more than his loss, and in all cases when the loss is equal to or greater than the amount insured by the several policies, there can be no pro rata, but the several underwriters are liable for the several sums incurred."

**2035.** "In the case of the Richmondville Union Seminary v. Hamilton Insurance Company, 14 Gray (Mass. Rep.) 469. The Seminary building

was of the value of \$24,000, and was totally destroyed. The defendant had insured \$3,000 upon it, and the plaintiff had \$11,000 insurance other than defendant's on the property, making a total of \$14,000. The court *held* that the defendant was liable for the full amount of its insurance (\$3,000). There was a clause in defendant's policy similar to the proviso in this case. To apply the principal contended for in this case would produce the following result: As \$24,000, the loss, is to \$14,000, insured, so is \$3,000, insured by the defendant, to its liability. This would reduce the defendant's liability on an insurance of \$3,000 to \$1,750. *The operation of this principle in case of double insurance would be that the greater the loss in excess of the insurance, the less the underwriters would be liable to pay the assured.*" (2122.)

**2036.** "*Haley v. Dorchester Insurance Company* was a case of double insurance, with a clause in the policy of like import as in this case. The defendant insured \$2,000, and there were other insurances of \$3,000. The loss of the assured was \$5,000. *HELD: That defendant was liable for the amount of its insurance.*" 1 Allen Mass. Rep. 536."

**2037.** "In the case of *Aetna Fire Insurance Company v. Tyler*, 16 Wendell's N. Y. Rep. 400, Chancellor WALWORTH, in speaking of a similar clause in the policy, says: 'The plain and obvious meaning of the whole clause is, that if the assured has any other policy or insurance upon the property, by assignment or otherwise, by which the interest intended to be insured is already either wholly or partially protected, he shall disclose that fact and have it indorsed on the policy, or the insurance shall be void; and the same where he shall make any subsequent insurance: also that, in case of any such prior or subsequent insurance, although it is notified to the company and indorsed on the policy, the underwriters in the two policies shall contribute ratably to this loss, so that in no event can he recover more than the amount of his actual loss.'"

**2038.** "The case of *Lucas v. Jefferson Insurance Company*, 6 Cowen's N. Y. Rep. 635: The judge charged the jury, that *if the value of the property insured, and the amount of the loss by fire, were equal to all the sums insured by the different underwriters, the verdict, if they should think plaintiff entitled to recover, ought to be for the face of the policy, with interest.* On motion for a new trial before the Supreme Court, the motion was denied."

**2039.** "In the case of *Sloat v. The Royal Insurance Company*, 13 Wright 20, Read, J., who delivered the opinion of the court, recognizes the same principle, that *there can be no apportionment where there is no over-insurance*, when he says: 'In the case before us there is no over-insurance, all the policies, if paid, will not pay the loss sustained by the assured. A calculation, therefore, which will cut down payments, must be based on erroneous principles.'

**2040.** "In addition to the cases cited, I find the courts of Maryland and Missouri have adopted the same rule of construction as that of New York and Massachusetts—that where the policy contains a clause that, where there are other insurances upon the same property, in case of loss, the assured shall not recover on the particular policy any greater portion of the loss sustained than the amount insured by the particular policy shall bear to the whole amount insured on the same property, *the several underwriters are liable for the several sums insured, when required to indemnify the assured for the loss sustained*. See *Angelrodt v. Delaware Insurance Company*, Supreme Court of Missouri; *Baltimore Fire Insurance Company v. Loney*, 20 Maryland Rep. 20, 1862."

**2041.** "To adopt the principle the defendant contends for, that the underwriters shall receive an abatement from the amount insured, in the same proportion that the whole amount insured bears to the loss, *would be so flagrantly inequitable and unjust*, that I fully concur with the rulings of the several courts in the cases cited."

**2042.** The case in suit here was one of *total loss*, where the insurer claimed contribution from the insured in the proportion that his policy bore to the whole insurance, under the *contribution clause*, which was made a condition of the policy. The ground of the adverse decision was simply that contribution was inoperative in the case of a total loss.

**2043.** In 6 Cowen, p. 625, above cited (**2038**), the doctrine is—

"That no arrangement of the clauses in the policy shall be used to the disadvantage of the insured; *he must be paid, and the dispute, if any, be settled between the underwriters.*" (**2165a**)

**2044.** In the case of *Godin v. London Assurance Company*, 1 Barro 489 (before the introduction of the *contribution clause* into fire policies), in a case of double insurance, where the insured proceeded to collect all of his loss from one of the insurers, Lord MANSFIELD said:—

"As between them (the insurer and the insured) and upon the footing of commutative justice merely, there is no color why the insurers should not pay the insured the *whole*; for they have received *premium* for the *whole* risk."

Marsh. Ins. 120; Weskett Ins. 183; Park Ins. 284.

He adds, speaking of the co-insurers:—

"However, *if* these underwriters are liable to contribute at all, the contribution ought to be among the *several insurers* themselves; but the *insured* has a right to recover the *whole* loss *from the defendants* upon the policy now in question, by which they are bound to pay the *whole*."

"Therefore, upon these grounds and principles, in every *light* in which the case can be put, we are all of us clearly of the opinion that the verdict is right, as it now stands, for the *whole*." (1989.) (Park Ins. 284.)

**2045.** From this decision of Lord MANSFIELD the following rule has obtained in England:—

"In no case must the contribution clause be construed in such a manner as to throw loss upon the insured against which he would have been fully protected had his policies been free from that clause."

This is equivalent to the doctrine enunciated in 6 Cowen above. (2043.)

### "RATABLE PROPORTION"

AS DISTINGUISHED FROM PRO RATA PROPORTION.

#### PRO RATA PROPORTION.

Strictly speaking, pro rata and ratable are synonymous; but to illustrate the principle of floating policies, these terms will be used as representing different elements. (2206.)

*Ratable* liability to the *insured* under compound policies  
CLASS II.

PRO RATA, liability to *co-insurers*.

**2046.** *Pro rata proportion* is such share of a loss as the amount of the policy may bear to the aggregate sum of the *concurrent* insurance upon the subject at risk. This principle forms the basis of the contribution clause. (2157 *et seq.*)

**2047.** It is operative to its full extent, and *always*, only in cases of *concurrent* insurances, either in specific policies or upon concurrent subjects in compound policies. And ~~not~~ in no event can one policy claim from another policy, when thus concurrent, more than its *pro rata* share of the contribution

to any loss, ~~and~~ even should one become exhausted while another makes a salvage upon the same subject, (1999.) But, while the companies are thus limited by the contribution clause to the pro rata shares of each, *the insured may, under certain contingencies—as when the compound policy has a specific item of its own—claim more than such pro rata share from any floater, should it be necessary to complete his indemnity under the policy.* (2160, 2193, 2213, 2213a.)

**2018.** Hence as the *pro rata* proportions that the sum of any given compound or floating policy may bear to the aggregate insurance upon all or any of its items, will *not always*, and under every contingency, afford to the *insured* the requisite share of indemnity due from such policy, to make full payment of the loss thereunder, it is evident that *pro rata proportions* alone are not reliable in all cases. (2157.)

**2019.** In the failure to recognize and provide for this contingency, so that the rule of proportional payment of loss may harmonize with the obligation of the policy to pay to the extent of the sums insured, the National Board form of the *contribution clause* comes short of that comprehensiveness *exacted by the laws* for such *restrictive stipulations*.

## RATABLE PROPORTION.

**2050.** *Ratable proportion* is the amount for which a policy may become liable to the *insured* (2047) to contribute to the payment of a partial loss, upon all or any of its items, *in addition to the pro rata share contributed with other co-insuring companies upon concurrent subjects under the contribution clause.*

It arises from the nature of non-concurrent policies, especially as exemplified in compound insurance, CLASS II., in contact with specific policies upon the same loss, where *pro rata* proportions of all the co-insurers fail to give the requisite indemnity though there may still remain some unexpired insurances.

From this it is evident that the *basis of contributive liability* is two-fold:—

**2051.** *First* (and always): THE AGGREGATE AMOUNT OF THE CO-INSURANCE.

In *concurrent* insurance, specific or compound, the *ratable* proportion is always based upon the *aggregate amount* of the *co-insurance*, each being liable for its *pro rata* share in the contribution as far as concurrent, or when a general loss is partial only, so that none of the insurances are exhausted; in which case the *pro rata of the insurance* is the *ratable* proportion of the policy to the loss.

**2052.** *Second*: THE ASCERTAINED LOSS, which becomes operative as the basis of apportionment (and re-apportionment) of the *insurance* under compound policies, *in all cases* (2194) but more especially under *non-concurrent policies*, where the *ratable proportions* will always depend upon the respective liabilities of the several policies upon the general or concurrent loss, and not alone upon the *pro rata* amount of the aggregate insurance. (2152, 2213a.)

For a clearer comprehension of these propositions, reference is made to the several *Statements* under compound policies CLASSES I. and II., where the apportionments are all made in obedience to these principles. *Statements* xiii. and xx. are especial examples of *ratable proportions*, as distinguished from *pro rata proportions*.

#### EXHAUSTED POLICIES.

**2053.** The status of an *exhausted policy*, as to *liability* for subsequent assessment upon *the remainder of unpaid loss*, is as if such policy had never existed; and while the *contributive liability*, as *already assessed under the contribution clause*, may be changed by subsequent re-apportionment, from *pro rata* to *ratable proportions*, its amount can never be increased. It may occur that insurance under a compound policy may be exhausted upon some one or more of its items, and not upon all; in such an event the treatment of the exhausted subject will be the same as for exhausted policies.

In view of this liability to such re-apportionment, *exhausted policies* present two distinct phases:—

*First: Those which pay their pro rata proportions and leave no unsatisfied liability upon any of the subjects under their protection. The apportionments of such are final and are not subject to be re-opened, except for error. They are to all intents defunct.*

*Second: Those which fail to pay their pro rata in full, and leave unpaid indemnity upon all or a portion of the subjects under their protection, to be provided for by proportionate contributions from other unappropriated insurances. (2212, 2230.)*

This class when thus *over-assessed by pro rata contribution*, is subject to *re-apportionment* with a view to reduction of the amount of such *over-assessments* to the true *ratable* proportions to correspond with the sum or sums re-assessed upon the unexhausted policies.

## UNEXHAUSTED INSURANCE.

**2054.** As a general rule *unexhausted policies remain liable to their full extent for all unpaid indemnity*, though they may or may not be concurrent with each other upon all or any of the remaining subjects. When *non-concurrent* they are brought into *pro rata* contribution only through their liability for unpaid indemnity inherited from their original concurrency with defunct policies, and are to be reached, if at all, only by re-adjustments under such defunct policies, *after all concurrent insurance has been fully appropriated*. For an illustration, see *Statement xii. (2205.)*

## RE-ASSESSMENTS.

**2055.** *Re-assessments* are made only for the benefit of, and to give full indemnity to the insured. No one company can claim contribution from another co insurer, beyond its *pro rata* proportions under the contribution clause. (2047.)

The necessity for *re-assessments* arises when totally or partially *exhausted policies* leave unpaid indemnity upon any subjects, to be apportioned among remaining unapplied insurance.

Occasions where it may be necessary to *re-assess unexhausted*

*insurances* are so diverse, that general instructions only can be given, which, with examples of the *modus operandi* under several different phases, as found in the various statements under compound policies, to which reference is invited, will serve to make the *principle of re-assessments* perfectly plain to ordinary comprehensions.

#### RE-ADJUSTMENT OF APPORTIONMENTS.

**2256.** This may be termed one of the *arcana* of contribution, not generally understood among young fire underwriters; yet it is so natural an inference to be drawn from the requirements of the *law of indemnity*, that,—

“No apportionment of loss must be made among companies, which will not indemnify the insured to the full amount of the insurance;”—

that in the investigation of the liabilities of *unexhausted insurances*, upon remaining unpaid losses, its necessity at times becomes not only evident, but exacting.

When *unexhausted insurance* leaves unpaid indemnity upon certain subjects under the protection of the insurance, upon which none of the remaining policies may be *directly* liable, and such unappropriated insurance cannot be brought, through its original concurrency with the exhausted insurance, to apply *directly* thereon, the loss of necessity falls upon the insured, as contribution is exhausted; for no policy can be compelled to contribute upon an item that it does not cover or cannot be legitimately made to cover—a circumstance, however, that seldom occurs when the loss is within the amount of the aggregate *general* insurance.

But when, by any apportionment of the insurance, or subsequent re-arrangement of assessments already made, such unappropriated insurance can be made *liable* for any unpaid indemnity, such *re-apportionment* becomes simply obligatory. (2205.)

**2057.** *Re-arrangement of assessments is usually confined to totally or partially exhausted compound policies; any change made in the unexhausted insurance is simply by addi-*

tional assessments thereon to the requisite amounts upon *deficient* subjects, within the amounts of the several policies. (2206.)

One *re-arrangement* of assessments may necessitate a second to settle the proportions disturbed by the first; but the principle will be the same throughout.

**2058.** The process of *re-arrangement* consists in first taking a *requisite* sum—as all or as much of the unpaid indemnity upon any deficient subject within the amount of the policy—from one or more items of the *exhausted compound* policy concurrent with the unapplied insurance, upon which there may be an excess of insurance, and adding it to another subject, non-concurrent with the unexhausted policy about to be reassessed, yet covered by the exhausted policy in which the change is to be made, thus creating a deficiency of *pro rata* contribution in this latter upon such first item *concurrent with the unexhausted* insurance, and to be made good by it within its limits; the deficiency caused by such transfer from the floating insurance to be filled by an increase of proportion of the co-insuring assessment upon that subject, yet making no difference in the aggregate results of the exhausted insurance, which has been neither increased nor diminished, but simply changed from its *pro rata* to its *ratable proportions*; and the insured will have received further indemnity to the amount involved in the transaction.

As it is impossible to make the process clear by simple description, reference is made to *Statement xii. (2205.)* where the operation is carried out *in extenso*, which example, with the foregoing explanation, will render the process plainly intelligible.

From these citations we gather the following to be the *true intent and operation* of the *contribution clause* in the apportionment of *contributive liability* among co insurers, upon an ascertained general loss, as recognized by our courts.

#### FIRST: AS TO THE INSURED.

**2059.** The *insured* must be paid in full for all loss or damage within the amount of insurance, and he is not liable to *contribution*, that is, he cannot be called upon to bear any

portion of the loss while any of the insurance, specific or compound, remains unapplied to the full extent of its liability, *except* when the policy or any one of them may be subject to average by specific stipulation, which will be operative only in the policy containing it. (1985, 2164, 2165.)

**2060.** The *insured* can recover from no company more than its *ratable proportion* of an accrued general loss (2050.)

#### SECOND: AS TO CO-INSURERS.

**2061.** The *contribution clause* is operative only between co-insuring policies, in cases of double concurrent insurance, and then *pro rata* only so far as they may be, or can be made concurrent. (2038.)

It is applicable only in cases of "over-insurance," that is, when the concurrent or double insurance exceeds the amount of the *general loss*. (2033, 2038.)

Or, in other words, when the *general loss* exceeds the amount of concurrent insurance, the principle of *pro rata apportionment* is not applicable.

#### THIRD: LIABILITIES OF THE POLICY.

**2062.** Each contributing policy, specific or compound is liable to be assessed *pro rata* upon each item of concurrent insurance under its protection, with each co-insurer, until exhausted if necessary, or until the general loss shall be paid. (2051.)

**2063.** Where compound policies cover specific items not included in the double insurance, the loss upon such specific item or items shall be first paid, and the remainder, *if any*, shall be held to contribute with the double insurance *pro rata* in the amount of such balance only. (2070.)

**2064.** HELD, in Pennsylvania, Kentucky, Missouri, and New York: "That a policy on two subjects is to be applied to the *separate subject* until the loss is paid and the amount to be paid upon the *joint subject* is divided

between the policies in the proportion of the amount of the separate policy on the joint subject, to the remainder of the policy on both subjects. (2213.)

**2065.** *Contributive liability* is not exhausted between remaining insurances, specific or compound, because one or more of the policies may have been exhausted before the loss has been paid. (2054.)

## APPORTIONMENT OF INSURANCES.

**2066.** *Apportionment* of insurance is the act of determining the amount of the several insurances written upon the property at risk that each policy must, under its terms and conditions, contribute to the payment of an *ascertained general loss*, whether such policy covers under the specific, general, or floating form, either concurrently or non-concurrently.

In making up such an apportionment of insurance among the companies interested, all existing *valid* policies must be included in the contribution, even though a company issuing any of them may have subsequently become insolvent. (197, 1002.)

**2067.** From the nature of the contract, the insured can recover no more than the actual loss proved within the insurance, in how many different companies soever he may hold policies upon the same subjects. Nor can he recover from any one company more than its *ratable proportion* of the general loss. (2059.)

**2068.** When the amount of insurance is enough to cover the loss, *no apportionment between companies having non-concurrent policies is allowable that will fail to pay the full amount of loss within the insurance, upon all or any of the items under the protection of the policies*, which are liable to their full extent, or any proportion thereof upon *either* item covered by them. (2043.)

It may happen that the policies will cover some portions of the property to an extent beyond the loss, while on other

portions the loss may exceed the aggregate insurance; the apportionment should be made accordingly, and, if the insured has failed to cover the whole risk, or any portion thereof, he is to be considered as his own insurer (not co-insurer) for the excess of value. (2059.)

#### UNDER SPECIFIC INSURANCES.

**2069.** *Specific*, as applied to fire insurance, is relative only, and represents a certain sum upon certain property; but, unlike the average policy, it has no *proportionate* relation to the value of such property, it is liable to the extent of the sum covered by the policy (306), and this pro rata, when interested with concurrent insurance.

*Specific insurance* is of two kinds, differing only in the manner in which their several amounts are ascertained; but these sums duly ascertained, they meet a loss in precisely the same manner. (308.)

**2070.** *First:* A simple *specific* or *fixed* policy, covering specific items, in *specific sums*, in specified localities, and for specified owners, as :—

Company A.	on wheat,	\$5,000	for Jones,	in warehouse,	etc.
"	B. on flour.	5,000	do	do	
"	C. on do	5,000	do	do	

In the event of loss on wheat, the insurance being already determined, company A would pay the amount within the policy. In the case of loss on flour, companies B and C would pay the same in equal proportions, their liabilities being equal.

**2071.** *Second:* Or it may be upon a *specific subject* in a compound policy, concurrent or non-concurrent, as :—

Company A.,	on wheat	\$5,000
Company B.,	on wheat and flour	5,000

In this example, *flour* in policy B is a *specific subject* (as compared with *wheat*), which is the concurrent item, the amount of insurance upon which, though not determined at the time of insuring, is nevertheless *fixed the moment a loss occurs*, and the

entire policy becomes *specific* in the sums indicated by the loss. Thus, should loss occur upon wheat, \$2,500, and upon *flour*, \$5,000, B.'s policy would at once become *specific in its full amount on flour*, leaving company A. solus upon wheat. But should the loss be \$2,500 each on wheat and flour, the policy of company B. would become *specific* in these proportions exactly, and pay \$2,500 on *flour* as its *specific subject*, and contribute with policy A. in its remaining \$2,500 on wheat, as concurrent insurance.

**2072.** This example might be slightly complicated by adding another policy on wheat and *corn*, \$5,000, in which event the same course would be pursued with *corn*, before the contributing insurance upon wheat could be determined. (2089.)

It will thus be seen that *specific policies* and *specific subjects* in general policies are intrinsically alike, and are to be treated in precisely the same manner. (2079.)

**2073.** Apportionment under *specific* insurance or general policies when made *specific* becomes a simple matter of value of the property lost or damaged, and the amount covered by the insurance, as insurers pay all damage sustained within the amount of the policy without reference to the value of the property at risk. If there be more than one policy, the loss is apportioned *pro rata* as the insurance bears to the damage. (2062.)

When *specific policies* are found in contact with compound insurance, the contributive liability of the latter cannot be ascertained until the amount of *specific* insurance upon the *general subjects* shall have been determined as above. (2071.)

#### UNDER THE AVERAGE CLAUSE.

**2074.** Apportionment of contributive liability under policies subject to average will require from the insured a valuation of the property at risk under the protection of the insurance at the time of the loss, and gives him only such proportion of the loss as this *value* may bear to the *insurance*, *specific* or in the

aggregate, as the clause may read (2259), thus making him co-insurer for any excess of *value* there may be beyond the insurance, and requiring him to *contribute*, as co-insurer in the same proportions. (366, 2252.)

In English practice the *specified* policies (308) are made to contribute to such deficiency. (2264.) In this connection it has been tritely asked by an English writer :—

“With what show of justice can the insured call upon the specific policy to contribute to the deficiency caused by the operation of the average clause, when in taking such policy he voluntarily agreed to stand co-insurer with the company upon any loss under the policy?—an agreement, by the way, to which the consent of the specific policy office was never asked.”

**2075.** The difference in the position of a party holding specific insurance (*i. e.*, without the average clause) and one holding subject to average is very marked, and should be kept in view in making up adjustments where the two classes are interested upon the same loss.

In England the holder of a specific policy bears all of the loss in excess of the insurance and is entitled to the salvage, if any, while the holder of an average policy not only bears all of the loss in excess of the insurance, but must, in addition, contribute to the payment of his own loss under insurance, in the proportion that any excess of value of property at risk, over the amount insured thereon, bears to the amount of such excess; and he shares the salvage, if any, in the same proportions as if he were another underwriter, to the amount of such excess of value. In American practice the salvage, after apportionment, belongs to the insured.

#### UNDER COMPOUND POLICIES.

**2076.** *Apportionments* under compound policies, confined to single or to concurrent policies, are, like the specific, mere questions of value; but when combined with specific forms or with other compound insurance common in heavy business transactions, and especially when such double insurance is non-concurrent, questions of equitable apportionment among

co-insurers will arise requiring considerable familiarity with the peculiar characteristics of non-concurrent policies to solve correctly when assuming one or another of the protean forms of the compound policy.

**2077.** Most, if not all, of the misapprehension and confusion attending the application of the principles underlying the contribution clause to the apportionment of insurances under compound policies arise from a non-appreciation of the distinctive peculiarities presented by non-concurrent policies affected by double insurance, specific and compound; always more or less prominent and vital to a correct apportionment of liability among co-insurers.

**2078.** The variety of existing RULES, both English and American, intended to solve this problem, are so many evidences that these *peculiarities* have been recognized; but the inadequacy of existing rules, to apply with uniform results in *all cases*, is simply further evidence that these peculiarities have not been appreciated to their full extent, or, in other words, that no thoroughly systematic grouping or classifying of compound policies, according to their several characteristics, has ever been practiced by fire underwriters.

**2079.** Paradoxical as the assertion may appear to the cursory observer, it is nevertheless true that a *compound policy is simply specific insurance in the aggregate (307. 319)*, requiring only the occurrence of loss upon any one or all of the several subjects under its protection to determine its insurance liability upon each item so covered. **(2071.)** Like other specific policies, it is liable to contribute when interested in the same loss with other co-insurance—specific or compound—only to the extent to which it may be concurrent upon any one or more items of the general loss, after its own specific liability, if any, shall have been so determined. **(2071.)**

Compound or collective policies may be divided into two general classes, concurrent and non-concurrent: for which solution of this vexed problem the fraternity is indebted to the researches, many years since (1862), of C. C. Hine, Esq., the

veteran editor of the *Insurance Monitor* of New York, by whom the several risks were subdivided into five classes, embracing, however, only the two principles—concurrency and non-concurrency.

Such concurrency may be *general* or *partial*.

#### CLASS I.

**2080. GENERAL:** Where the compound policy covers only and identically the subjects covered by the "other insurance," whether specific or compound.

#### CLASS II.

**2081. PARTIAL:** Where the compound policy protects one or more items not included in the "other insurance," either specific or compound. (**2071.**)

This will embrace most of the non-concurrent forms of insurance in use.

With a view to test the correctness of the preceding proposition, and its universality of application, a number of examples of *Classes I. and II.*, illustrating the various phases and combinations of the compound policy, are appended, which, construed by the general principles underlying this form of the insurance contract, may materially aid in removing the misconception and confusion which has so long surrounded this subject. (**318. 2071.**)

#### CLASS I.

##### GENERAL CONCURRENCY OF SUBJECTS.

**2082.** This is the more simple form of collective policies presenting little or no variety in its combinations—its distinguishing feature being *double insurance*, which, under compound insurance, does not differ from other double insurance. (**326.**) It is the basis class of this form of risk.

The distinctive feature of **CLASS II**—a specific item not embraced in the other insurance, which is but a modification of **Class I.**, does not exist in this form.

## EXAMPLE 1.

2083.	Company A covers stock .....	\$1,000
	“ “ fixtures .....	500
	“ B “ stock and fixtures .....	1,000

In this example company A covers stock and fixtures in specific or fixed amounts, so that the insurance is evident before the loss; while company B covers the same items generally, both policies being *concurrent* on both subjects though in different amounts, hence double insurance; the specific insurance upon each or either by B will be contingent upon the loss. (321. *Statement xii.* 2199.)

## EXAMPLE 2.

2084.	Company A covers wheat in warehouse	No. 1.
	“ B “ “ “	No. 2.
	“ C “ “ “	Nos. 1 and 2.

Here companies A and B cover specifically in the same localities where company C covers collectively, thus making a *general concurrency* of risk, hence double insurance. The contributive *insurance* of company C, upon either or both items, being, as in example I, contingent upon the loss: this determined, the three policies contribute *pro rata*. If, in so doing, company C's policy should become exhausted, the policies of A and B must make up the deficiency *ratably* as the loss may require, as in ordinary specific insurance, upon concurrent items. (2160. *Statement xiii.* 2209, 2213.)

## CLASS II.

## PARTIAL CONCURRENCY OF SUBJECTS.

**2085.** Embracing compound policies covering one or more subjects *not* included in the "other insurance," hence only *partially concurrent*

This is the more complex form of compound policies having CLASS I. as a basis, and embraces the larger proportion of collective insurances.

The collective insurance becomes co-insurer, when made concurrent, upon concurrent subjects only, the amount of contributive liability being determined solely by the loss thereon. (**324.**) When thus ascertained it will contribute *pro rata*, with co-insurers, upon each item under its protection, as the loss thereon bears to the aggregate insurance, whether specific or compound, as in ordinary concurrent *specific* insurances.

As this class will present a variety of combinations, they will, for convenience of reference, be termed FORMS A, B, C, etc. (**307. 327. 2071.**)

## EXAMPLE 1.

## Form A—No. 1.

**2086.** Company A covers stock.

" B " stock and fixtures

In this example, A is a *specific policy*, while B is a compound policy with a *specific item*—*fixtures* (**2196**). *Statement xiv.* (**2214. 2215.**)

## EXAMPLE 2.

## Form A—No. 2.

**2087.** Company A covers building.

" B " building, machinery, and tools.

Here company A is specific on building, while B is *compound*, covering concurrently with A on the building, *to the extent of its liability—when ascertained—but having machinery and tools in addition, as specific items* to be first paid for. *Statement xiv.* (**2214.**)

## EXAMPLE 3.

*Form B—No. 1.*

- 2088.** Company A covers merchandise and *fixtures*.  
       “ B “ merchandise and *goods on storage*.

In this case both A and B are *compound policies*, each having a specific item of its own, not covered by the other, though concurrent in *any balances* upon merchandise after contributing to their several specific subjects—an example of *double compound insurance*, unlike CLASS I, the concurrency not being general. *Statement* xvi. (**2216**.)

## EXAMPLE 4.

*Form B—No. 2.*

- 2089.** Company A covers pork.  
       “ B “ pork and *flour*.  
       “ C “ pork and *grain*.  
       “ D “ pork, *flour* and *grain*.

This is simply *Form B—No. 1*, complicated by “double insurance” upon the specific subjects, *flour* and *grain*, covered by B, C, and D, which are none the less specific because they have co-insurers, and which must first be disposed of before A can claim contribution from them upon its specific item, pork. (**326**), *Statement* xix. (**2224**.) This example might readily be confounded with policies under CLASS I. But inasmuch as the concurrency is not *general*, it does not come under that class.

## EXAMPLE 5.

*Form B—No. 3.*

- 2090.** Company A covers *teas* and *sugars*.  
       “ B “ *sugars* and *wines*.  
       “ C “ *wines* and *fish*.

In this example we have *Form B—No. 2*, slightly extended. All of the policies are compound; but A has *teas* for a specific

item, while C has *fish* specially, neither being included in either of the other policies and hence non-concurrent, otherwise concurrent, and must contribute upon any balances after these specific items are disposed of. It is complicated by *double* compound insurance.

This case might be extended by adding *rice* to policy B; each compound policy would then have a *specific* item to be first disposed of before contribution could be claimed by co-insurers upon concurrent items. *Statement xx.* (2228.)

## EXAMPLE 6.

*Form B—No. 4.*

2091. Company A on books, stationery, fancy goods, and other articles usually kept in such stock.  
 “ B on books, stationery, paper and pictures.  
 “ C on books and stationery.  
 “ D on school-books.

2092. This is *Form B* considerably extended. By a proper classification of the liabilities of the several policies, it will be found that—

Company A as to company B has <i>one</i> specific subject.					
“	A	“	“	C	“ <i>two</i> “ subjects.
“	A	“	“	D	“ <i>four</i> “ “
“	B	“	“	C	“ <i>one</i> “ “
“	B	“	“	D	“ <i>three</i> “ “
“	C	“	“	D	“ <i>two</i> “ “

All of which specific items must be first disposed of before policy D can claim contribution from its co-insurers upon school books, *Statement xxi.* (2230.)

## EXAMPLE 7.

*Form C—No. 1.*

2093. Company A covers Jones & Brown (individual interests), on stock  
 “ B covers Jones, on his interest in stock.

Here we have a compound and specific interest in the same subject; a slight examination of which will show that the prin-

ciple involved is the same as in Example 1 (*Form A—No. 1*). The respective interests covered are those of Jones and Brown; consequently, as policy A covers both, it is the compound insurance, its *specific item* being the interest of Brown, whatever that may be in the firm, and as indicated by the loss. (2211.)

## EXAMPLE 8.

*Form D—No. 1.*

2094. Company A live stock, generally.

“ B “ “ not to exceed \$500 on any one animal.

“ C “ “ no one animal to be valued at more than \$500.

Here company A covering without qualification as to value becomes of the nature of the compound policy CLASS II., and floats with any losses to make the indemnity complete within its amount should the limitation clause of the co-insurers B and C cause a deficit in the pro rata payment of any loss. (2214.)

2095. Other modifications of the two CLASSES might be given; but as no principle would be eliminated not already found in the examples cited, it would seem unnecessary; especially as adjustments, with full explanations as to the *modus operandi*, will be found in the several *Statements* illustrating compound policies.

## EXISTING RULES

## FOR THE APPORTIONMENT OF INSURANCES AMONG CO-INSURERS.

2096. Notwithstanding the existence of a number of RULES or methods of apportionment of contributive liability among non-concurrent policies, there is no generally recognized uniform system of apportionment in use among American underwriters, the entire matter being left to the adjuster to adopt such method as may seem most advantageous for his own company, or as

mere caprice may dictate;\* not unfrequently resulting in injustice to the insured, or to co-insuring companies, or to both, and as frequently ending in vexatious law suits, as well as lasting injury to the reputation of the company.

**2097.** The following are the more prominent and oldest "existing rules"—

I. READING RULE.	V. (No specific designation.)
II. FINN RULE.	VI. do. do.
III. ALBANY RULE.	VII. do. do.
IV. (No specific designation.)	VIII. RULE OF PROPORTION.
IX. ENGLISH RULES.	

**2098.** These several *rules* originated from the necessity for providing some uniform and definite plan for making "an equitable settlement between compound and specific policies and the party insured,"—each new method resulting from the failure of its predecessor to meet the necessities of the case satisfactorily; and although intended for, and offered as *general* rules, all of them seem to have been constructed upon the basis of particular cases, illustrating individual opinions—if not to serve individual interests—rather than embracing any recognized system or inculcating any broad principle of general applicability in the solution of the problem of apportionment of contributive liability among non-concurrent insurances. Hence, they fall short of that universality of application which should characterize *general rules* upon any subject. (**2079.**)

**2099.** As no particular method of apportionment, however specious it may appear, can be made a *standard* or *general rule*, unless it will provide for and apply uniformly to *all* the variations of loss that might happen under *one* class of policies, so anything *short* of this could not reasonably be considered a *RULE*, and would not fail to work injustice to some of the parties n interest, under certain contingencies which might readily arise.

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\* Or, as an experienced practical adjuster puts it very pertinently: "Have been for all the rules, and don't know where I stand; get converted to a new way at every fire."

**2100.** With a view to test the operation of these several RULES by the application of the principles of *apportionment* and *contribution*, as laid down in the preceding pages, they will be taken up in the order indicated, and each worked out to its *logical* results, under its own specific stipulations. And, when such are to be had, examples will be quoted from the authors of the several *rules*, that they may not be misconceived or misrepresented.

## RULE I.

## READING RULE.

**2101.** "If, at the happening of any fire, the insured shall have a policy or policies covering, in one sum, property or interests other than is expressly covered by this insurance, and at the same time including and covering the specific property or interest herein expressed, then, to determine the amount for which this company is liable, such more general policy, as between the insured and this company, shall be considered *other insurance* on the specific property on which loss is claimed, in proportion as the sound value thereof shall bear to the value of all the property covered by such more general policy."

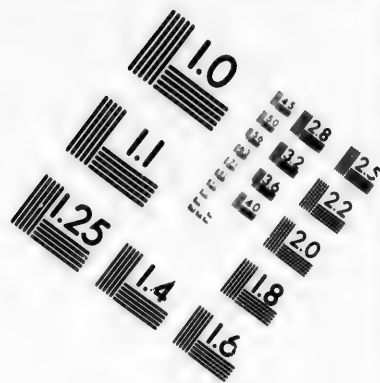
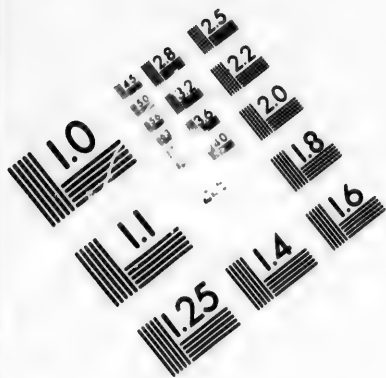
**2102.** The meaning of the above-cited rule, divested of verbiage, is to be found in the last three lines :—

"That compound insurance shall contribute with specific, in proportion as the value of the specific property bears to the value of all the property covered by the compound policy."

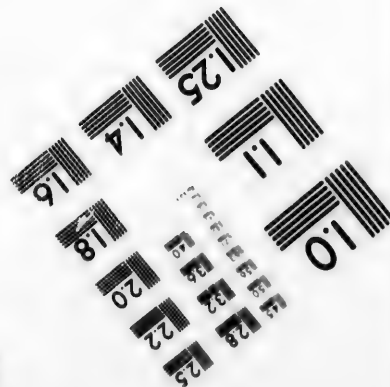
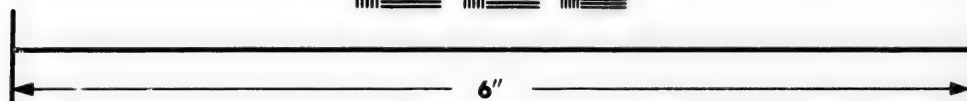
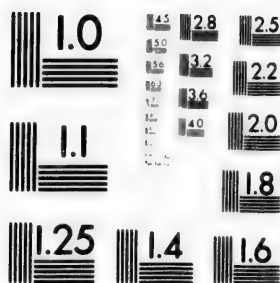
It thus entails the necessity of a knowledge of the *sound value* of the property under the protection of both specific and compound policies at the breaking out of the fire. (2143.)

In order that the intended operation of this *rule* may be fully comprehended, an article from *Currie's Magazine*, Feb., 1862, page 177, signed "R." (Reading), is here quoted, so far as it bears upon this rule. Speaking of specific and compound policies, it says :—

**2103.** "The mode of adjustment in such cases was discussed among fire underwriters many years back, and two rules were then put forth, both aiming at a proper division of a compound policy 'for the purpose of arriving at an equitable settlement between compound and specific policies, and the party insured.' We here refer to them as—



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"RULE No. 1—Which was to divide the compound policy (for the sake of settlement only) into parts, in proportion as the amount of the specific goods named in the specific policy bears to the whole value of the goods in store covered by the compound policy. For example: Goods in store—wines, \$12,000; teas, \$6,000; together, \$18,000; insured by A on merchandise, \$12,000, and by B on teas, \$6,000. In such case the rule *supposes* policy A covered, nominally, two-thirds, or \$4,000 on wines, and one-third, or \$2,000, on teas, both articles being 'merchandise.' These fractions represent the relative value of the articles. Of course, so far as it relates to compound policy A, the division is but nominal, and is used to ascertain how much the simple policy B must pay in case of loss; for, after such assessment on B, the compound policy is liable for any balance of loss on either article to the full amount of the policy."

**2104.** "RULE No. 2, as then suggested, was to divide the compound policy, in nominal settlement, in proportion as the ascertained loss on the simple article bore to the loss in the aggregate. (Finn Rule.)

"It will be readily perceived that where the loss is total of all the property the working of these two rules was precisely alike; but where the loss was partial and unequal in per centum on the different articles, the results would materially differ.

"The advocates for these rules each contended that they enabled the assured in his 'proofs of loss' to comply with the terms of the policies, which require him to state *under oath* 'what was the whole cash value of the subject insured,' and 'what other insurance, if any, existed on the same subject.'

"Take the above example and suppose a total loss of the wines and teas; the merchant presents his account of the loss on the teas to company B, who has insured them, specifically, for \$6,000, and he must state in his affidavit 'what other insurance, if any, existed on the same property.' Could he, or would he swear that he had insurance beside, in company A, for \$12,000 on the teas? If he did, it would admit that company B had lost but \$2,000, and involve himself in a loss of \$4,000.

"We confess ourselves not fully satisfied with either of these rules, though in practical working, we prefer the first mentioned; they attain to equity, or nearly so, in settlement between the companies insuring, and they admit that the insured shall have something to say in the matter, which Mr. Heald (Albany Rule) does not, and by them the insured can make up a 'preliminary proof' in accordance with the requirements of the policies."

**2105.** "R." does not carry the exemplification any farther. To test the rule, take the figures here given and add supposed losses, as follows:—

Company A, general, on merchandise...	\$12,000	Loss, \$12,000
" B, specific, on teas.....	6,000	" 4,000
Total.....	\$18,000	\$16,000

A is "supposed" to cover nominally *one-third* on teas, or \$2,000, and B *specific* on teas, \$6,000, making total insurance on teas \$8,000, on which loss is \$4,000, or 50 per cent.

A pays 50 per cent. of \$2,000—equals.....	\$1,000
B " " " 6,000— " .....	3,000

Total payment on teas.....\$4,000

**2106.** This would leave to A but \$11,000 with which to pay loss \$12,000 on general merchandise, while B makes a salvage, on specific insurance, of \$3,000; yet according to the rule as explained, it is only the *compound* policy that can be called upon for any balance of loss, the insured must suffer to the amount of \$1,000, with \$3,000 unexhausted insurance, under policy B. So it is evident that "*supposing*" a liability for the *compound* policy, as a basis of contribution in an ascertained loss, will not answer in all cases, especially when there is no occasion for such guessing.

**2107.** This example, being a total loss on the general property, the contribution clause would be inoperative; A should pay total loss, \$12,000, on merchandise, and B should pay for the teas. It is worthy of note that the contribution clause is entirely ignored in the operation of this rule.

**2108.** Another fundamental error of this rule is, that the proportions of liability are based upon the *value of the property at risk*, a contingency which is never applicable to fire-loss adjustments, except where the policies may be subject to average, or some other limitation clause. (2129.)

## RULE II.

## FINN RULE.

**2109.** "If, at the happening of any fire, the insured shall have a policy or policies covering, in one sum, property or interests other than is expressly covered by this insurance, and at the same time including and covering the specific property herein (by this policy) expressed, then, to determine the amount for which this company is liable, such more general policy, a between the insured and this company, shall be considered other insurance on the specific property on which loss is claimed, in proportion as the loss thereon shall bear to the loss (happening at the same time) on all the property covered by such more general policy."

Or, in other words, this rule is that the contributive liability of the policy shall be in the proportion that the loss upon the specific property may bear to the loss upon all of the property covered by the general insurance.

**2110.** The following quotation from *Mr. Finn* (A. D. 1842) will give his views by one of his own illustrations; and, to make it plain, it must be understood that *Mr. Finn* held to the strictest construction of the contribution clause as a contract by the insured. His example is as follows:—

Johnson, Vroom & Fowler effected insurance as follows :

In the Bowery Company, on stock and fixtures..... \$500 00

" Long Island Company, on stock.....1,500 00

Loss on stock, \$1,586.24; on fixtures, \$701.87

What sum has the Long Island lost ?

The company say that the Bowery's policy must help to pay the loss on stock, by virtue of the following clause in the policy, viz. : "In case of other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy, any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on said property."

And again, in the "Conditions of Insurance : "

"And in all cases of insurance, this company shall be liable for such ratable proportion of the loss or damage happening to the subject insured as the amount insured by this company shall bear to the whole amount insured thereon, without reference to the dates of the different policies." (2009.)

**2111.** "The amount insured on *stock* by the Bowery's policy is ascertained by the following proposition :—

"As the whole loss, \$2,288.11, is to \$500, the amount insured thereon, so is the whole loss on stock, \$1,586.24, to the amount, \$346.62, insured on said stock by their policy."

It appears, then, that—

The Bowery insure on stock.....	\$346 62
" Long Island " " .....	1,500 00

Whole insurance on stock is.....	\$1,846 62
" loss " " .....	1,586 24

"It only remains now to apply the rule of proportion to ascertain the amount *lost* by each company on *stock*. Thus, if \$1,846.62 insurance lose \$1,586.24, what will \$1,500 (the amount of the Long Island policy) lose? We find:—

Long Island Company lose.....	\$1,288 50
Bowery " " .....	297 74

Whole loss on <i>stock</i> .....	\$1,586 24
----------------------------------	------------

"It will be seen that this calculation is based upon the whole amount of loss (on property covered by the policies) at the time of the fire, and not upon the amount of the property at risk. With the latter, fire policies have no concern. It is the amount of loss only which interests them. The assured may have a million at risk; but if his actual loss be equal or less than the sum insured, it is all the underwriter can inquire about, or at least that concerns him."

"It has been said, in reference to this case: 'They have lost \$2,200; were insured \$2,000 on the property, and must, therefore, receive \$2,000 from some one.' In other words, they have bought so much insurance, and ought to have the worth of their money. The party making such a declaration must rather have *imagined* some covenant between the parties than have regarded the one actually existing! It is wholly at variance with the explicit terms of the contracts."

**2112.** Carrying out Mr. FINN's adjustment, the *Bowery* Company has remaining, after contributing with the *Long Island* on stock, only the sum of \$202.26 out of its \$500 with which to pay a loss of \$701.87 on fixtures, while the *Long Island* comes out with a salvage of \$211.50, and the insured comes out short of indemnity just that amount, upon a total loss in excess of insurance, in extenuation of which Mr. FINN says:—

"It should be remembered that, if the assured suffered loss in some cases, it is because he has not effected his insurance properly or with judgment, and that he ought to suffer for his own neglect or errors. It is enough that the insurance companies fulfil their contracts to the letter."

**2113.** Comment upon this style of argument is unnecessary, as the insured committed no error; nor was he guilty of any neglect in the making of the conditions of the contract; the company made those conditions and should, have been compelled to abide by them. (2162.) It will be only proper to add that inasmuch as the loss was in excess of the insurance, the contribution clause became inoperative, and both companies should have paid to the amount of their contracts without reference one to the other.

### RULE III.

#### THE ALBANY RULE.

**2114.** "If, at the happening of any fire, the insured shall have other insurance which includes the premises or property herein insured, *provided such policy or policies shall at any time, or under any circumstances or contingency, be liable to the insured for any amount whatever, such policy or policies, as between the insured and this company, shall be considered as co insurance and liable to contribution, anything in said policy or policies to the contrary notwithstanding.*"

**2115.** The advocates of the ALBANY RULE, like the Finn Rule, hold the *contribution clause to be a positive contract between the insured and the company, in the nature of a pro rata stipulation limiting the liability of the company—in all cases of loss, whether total or partial—to such share only as the amount of the respective policies may bear to the whole (gross) amount of insurance*, without reference to its concurrency, or whether such pro rata share would afford indemnity or not to the insured; thus frequently compelling contribution from him wrongfully, especially when the loss exceeds the insurance.

**2116.** At the same time this clause is held to be so far operative *between co-insurers*, as to hold compound policies liable to contribute with specific insurance *to their full amounts*, without reference to their own *specific liabilities* (if any), thereby also causing contribution wrongfully. (2026.)

**2117.** This rule—used in England somewhere about 1850—**(2027)**—was introduced in 1860, in the adjustment of a complicated loss at Albany, N. Y., some twenty companies concurring. It has since that time been known among underwriters under the name of the ALBANY or HEALD RULE.

**2118.** Standing alone and unexplained, this rule would seem to be but a paraphrase of the *contribution clause*; but, when explained by Mr. HEALD in the following unmistakable language:—

“Specific policies, by the express terms thereof, have a legal and equitable right to insist and demand that, as between them and the assured, a compound or collective policy shall contribute with them on each of the parcels insured specifically by them, and that, so far as their liability is to be determined, the collective sum is to be regarded as contributing insurance on each item so covered.”

And this construed by the light already obtained as to the construction placed upon the *contribution clause* by this rule, its infallibility should be conceded only *cum grano salis*.

**2119.** Previous to the adoption of this rule, the “only alternative” mode of apportioning *contributive liability* among policies was that of exhausting all *specific* insurance before the more *general* could be called upon to contribute—a mode borrowed from the English average adjustment, which has no counterpart in this country, except as stated in RULE V., and which Mr. HEALD says—

“Is the only alternative rule presented that has any claim to legal sanction,” and which he further says “is not founded in good law or sound policy, but is in fact offering a premium to loose underwriting—the more indefinite or general a policy is made the less likely will it be to suffer.”

**2120.** While the abrogation, from any cause, of a rule so objectionable as the English one, was a great step in advance, the substitution of the ALBANY RULE in its stead was simply lifting the difficulty; or rather, if possible, making a bad matter worse—not removing it. By the English custom the *specific* policies suffered, but the insured received his indemnity in full. By the ALBANY RULE the insured suffers, the specific

companies making a salvage out of him ; while the specific and the general policies change places, the latter being compelled to contribute to the last cent, while the former reap the salvage. There were some sharp hands holding *specific policies* in that Albany convocation.

**2121.** In support of this rule Mr. HEALD offers the following "as a synopsis of the method of an adjustment adopted in a recent case at Albany."

Home, on wheat in warehouse No. 1.....	\$5,000
Ætna, " " " 2.....	5,000
Market, " " 1 and 2.....	5,000

"The two first named policies may be termed specific contracts. The last may be termed a compound or collective contract."

Loss on wheat in warehouse No. 1.....	\$6,000
" " " " 2.....	5,000

"Proposition—how the Market policy is to apply :"

Contributing insurance warehouse No. 1.....	\$10,000
" " " " 2.....	10,000

Home insures five-tenths of the whole amount covering wheat in No. 1, and pays.....	\$3,000
Market " " " No. 1, and pays	3,000
Ætna " " " 2, "	2,500
Market " " " 2, "	2,500

\$11,000

**2122.** In justification for thus assessing the Market \$5,500 on a policy of \$5,000 only, or compelling the insured to lose the excess, \$500, when he held valid insurance to the extent of \$4,500 yet unexhausted, Mr. HEALD said (**2027**) :—

"The assured has, by a special clause in his contract with the Home and Ætna, equally binding on him as on them, severally agreed with each of them 'that in case of loss he shall not be entitled to demand or recover, on either policy, any greater proportion of the loss or damage sustained to the subject insured than the amount thereby insured shall bear to the whole amount insured on said property.' The insured has therein stipulated with each of the first-named companies as between him and them, that the Market policy shall contribute with each of them on the subject specifically insured by them ; and if the amount for which the Market is thus, by his contract, to contribute, exceeds the amount of its policy, the loss in excess of its policy rightfully falls on the insured himself, who has, by his contract with the Home and Ætna, specially debarred himself from the right to recover from

*them respectively a greater proportion of the loss than the amount insured by them shall bear to the whole amount insured on the property underwritten by them."*

**2123.** The above citation is given, not only in justice to its author, but because it covers all that can be said on this side of the question, and is an evidence of the uncertainty attending the contribution clause in its present form. (2013.) It may be good logic for the adoption of the ALBANY RULE by *specific* companies, when the "only alternative rule that has any claim to legal sanction" would have made the Home and the Ætna pay total losses \$5,000 each, and the Market would have been let off with payment of \$1,000, while the insured would have been paid in full.

**2124.** This rule received a pungent hit from a Canadian underwriter, soon after its promulgation at Albany. He says to an insurance journal:—

"I have perused with much interest the letter which appeared in your January number, referring to the adjustment of compound and specific policies; and it may be interesting to your numerous readers to know that the rule arrived at by the deliberations of so many experienced officers corresponds exactly, *except in a single particular*, with that which has for many years been acted on by many of the leading English offices."

"The difference referred to will be seen in the following contrast:—

## AMERICAN RULE.

"If the amount for which the Market is, by his contract, to contribute exceeds the amount of its policy, *the loss in excess of its policy rightfully falls upon the insured himself.*

Montreal, Jan. 12, 1862.

## ENGLISH RULE.

"As the assured must be no sufferer upon either building, so long as any part of his specific insurance upon it remains unpaid, *that specific insurance must be charged with the above excess.*"

D.

**2125.** In this connection it may be interesting to note the fact that, out of *thirty-six* printed policy forms in use by New York city companies, from A. D. 1860 until A. D. 1867, *four* only had inserted the ALBANY RULE as a condition of the policy; *twenty-three* contained the "only alternative rule," or what was intended to be such (2133), and among them the Home of New York (edition of 1865), while the other *nine* had the ordinary contribution clause. (2008.)

## RULE IV.\*

**2126.** If at the happening of a fire, the insured shall have insurance, by a policy or policies, covering in one sum property or interests other than is covered by this insurance, and at the same time including the specific property or interest hereby insured, then to determine the amount for which this company is liable under this policy, the amount of such more general policy or policies shall be held to apply to and cover the *separate properties* or interest covered thereby, so that, as nearly as the amount of such more general insurance will permit, such several properties or interests *shall each be insured* in the proportion that the whole insurance thereon, including the amount insured by both general and specific policies, bears to the sound value of all the property covered thereby.

**2127.** Divested of verbiage, this rule would seem to be as follows :

"If the insured shall have compound policies covering other items than those enumerated in the specific insurance (CLASS II.), such general policy shall cover the items under its protection (as nearly as may be) in proportion as the gross insurance bears to the sound value of *all* of the property."

Thus requiring a knowledge of the sound value of *all* of the property at risk.

**2128.** The following simple examples will test this rule :—

## EXAMPLE 1.

Co. A covers merchandise.....	\$1,000	Value.....	\$2,000
" B " " and fixtures 500 "		fixtures, 1,000	
Total insurance.....	\$1,500	Total value..	\$3,000
Loss on merchandise, \$1,000; on fixtures, \$350.			

## APPORTIONMENT.

Company B will cover merchandise and fixtures in the proportion of *one-half* each—being the proportion that the total insurance bears to the total value. This will leave \$250 insurance on merchandise by B, which will give the following result :—

A and B cover merchandise \$1,250, on which loss is \$1,000, or 80 per cent.

## CONTRIBUTION.

A will pay 80 per cent. of \$1,000, equal	\$800 00
B " " " " 250, " 200 00	

which will leave but \$300 to pay loss upon fixtures, \$350, while A makes a salvage of \$200, leaving the insured minus \$50 under full insurance.

\* This Rule is attributed to H. A. Oakley, Esq., late of the Howard Fire Ins. Co., New York.

Under the rule of CLASS II., company B would first pay loss on *fixtures*, \$350, and contribute with A in the balance, \$150, on merchandise. There would be no estimating chances as under this rule, and the insured would get full indemnity, as follows:—

EXAMPLE 2.

Company B pays loss on *fixtures*, \$350.00, leaving balance of \$150 to contribute with A on merchandise; this will give:—

A on merchandise, \$1,000, B balance, \$150; total, \$1,150, on which loss is \$1,000, or 86.956 per cent., which gives results as follows:—

Company A \$1,000 @ 86.9565.....	= \$869.56 5
" B 150 @ 86.9565.....	= 130.43 5
Total.....	\$1,000 00

**2129.** This making the value of the property at risk an element in the apportionment, is similar to the *Reading Rule*—a basis which, if otherwise correct, would still be unreliable, being dependent upon a variable contingency, as the insurance might in one case be partial only, and in another full; hence, the result could not be uniform and reliable. Thus, had the value of the property in Example 1 been \$4,500, the proportion of policy B's liability would have been but 33 per cent.; or, had the value been \$6,000, its proportion would recede to 25 per cent., and so with any other value of the property. The larger the value, the less would be the contributive liability of the compound policy, and the greater that of the specific insurance. In cases of full insurance, the general policy suffers; in cases of partial insurance, the specific policy takes its turn. (*Blake v. Ins. Co.*, 12 Gray Mass. 265, 2 Ins. Law Jour. 284.) **(215-78.)**

## RULE V.\*

**2130.** (1.) If, at the happening of any fire, the insured shall have a policy or policies covering in one sum property or interests other than is expressly covered by this insurance, and at the same time including and covering the specific property or interest herein expressed; then, to determine the amount for which this company is liable, such more general policy, as between the insured and this company, shall be considered other insurance on the specific property on which loss is claimed, in proportion as the sound value thereof shall bear to the value of all the property covered by such more general policy.

**2131.** (2.) Again, if at the happening of any fire the insured shall have a *floating policy* or policies, not specific, but covering goods generally, in various places not designated, and yet within limits which include the premises or property herein insured, such policy, as between the insured and this company, shall be considered as covering any *excess of sound value* of the subject insured beyond the amount covered by the specific insurances thereon; and, to determine the amount for which this company is liable in case of loss, such *floating policy* shall be considered an insurance on the property to the extent of such excess.

**2132.** (3.) And, in every case which may arise under this *seventh* condition, the insured or party claiming loss shall render such statements and accounts as will enable the parties interested to make the adjustments as aforesaid; and all settlements under this rule shall be without regard to any terms, conditions, or settlements then or before or thereafter made by and between the insured and any company or underwriter issuing such general or floating policies.

**2133.** The *first clause* of this rule is the READING RULE.

The *second clause* is virtually the second clause of the English floating (average) policy, omitting the average feature which gave it vitality (Hamlet with part of Hamlet omitted).

**2134.** The intention of this *second clause* was evidently to make the policy containing it an *excess policy*, as in the English form. But it is so unfortunately worded that it has a directly contrary effect, and makes *all other floating policies* interested in the risk *excess policies*, but *excludes itself*, as the *italicized* words of the second clause will plainly indicate, and as was decided in the Supreme Court of Pennsylvania (54 Penn. St. 271), where the Germania, Hanover, Lorillard, and Fulton insurance companies—all of New York—were defendants, each policy

\* Attributed to H. A. Oakley, Esq., late of the Howard Ins. Co., N. Y.

containing the above-cited clause, and under which these companies claimed that no liability attached to them until all specific insurance upon the property covered by them had been exhausted. (2011.)

**2135.** STRONG, J., before whom the case came upon appeal said:—

"In regard to this condition, many questions may be asked which it is impossible to answer with certainty. What is a floating policy? Is it defined in the condition? If so, it is a policy larger than either of those which the defendants issued for the limits within which the goods insured by it do include the property insured by the defendants. Or, is it a policy on goods generally, without any designation of the place where they may be? *I say, the policies of the defendants are not floating policies, for they are designatory of place.* Other questions might be asked, but we are not called upon to determine what the condition does mean. It is enough: it does not exempt the defendants from a liability which would exist without it. *It seems quite evident that when the defendants spoke of floating policies they referred to some other policies than their own. They are spoken of as distinct, and it is such floating policies of other underwriters that are to be considered as insurance upon the property to the extent of the sound value of the subject insured beyond the amount covered by the specific insurances thereon. We do not feel warranted, therefore, in holding that the seventh condition of the defendants' policies confines their liability to the excess of loss above that covered by what are called specific insurances.* The court then was not in fault in the instruction given to the jury."

**2136.** This clause was to be found in common use among the New York city companies from about A. D. 1860, as Clause vii., and continued until the adoption of the revised form of the NATIONAL BOARD policy, which occurred about the time that the above-cited decision was made; its presence in the policy gave a color of justice, so far as such a clause contained in one policy only could, to the custom of first exhausting specific policies before the compound or general could be called upon for contribution to a general loss. (2167, 2170.)

The *third* clause simply refers to the manner in which proofs shall be made under these stipulations.

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## RULE VI.

**2137.** (1.) If, at the happening of any fire, the insured shall have insurance, by policy or policies, covering in one sum property or interest *other than is expressly covered by this insurance*, and at the same time including the specific property or interest herein expressed, such insurance shall be considered other insurance on the property hereby insured for the *full amount* of such policy or policies.

(2.) Unless, in consequence of loss on property covered by such general insurance and not *included in this policy*, it becomes necessary to divide the amount of such general insurance, and in that case, to determine the amount for which this company is liable, the amount of such more general insurance, as between the insured and this company, shall be considered other insurance on the specific property on which loss is claimed under this policy, in the proportion that the sound value of such property in excess of the insurance covering it only, bears to the sound value of *all* the property covered by such more general policy or policies, in excess of all specific insurance thereon.

(3.) If, however, the sound value of the property covered by this policy, and included also in such more general insurance, shall not exceed the amount specifically insured thereon, then the amount of such more general insurance shall be deemed to be other insurance on such property, in the proportion that the sound value thereof bears to the sound value of all property covered by such more general policy or policies; and if the insured shall have an insurance covering a part only of the property insured by this policy, so that it becomes of such more general character, the claim of the insured against this company shall be adjusted as above expressed.

**2138.** The *first clause* is the ALBANY RULE in its full extent, *compelling* full contribution from general with specific policies, without reference to concurrency. (2114.)

**2139.** The *second clause* is a "rider" to bring the apportionment within the contribution clause where the ALBANY RULE fails to give full indemnity. But this rule fails to say under what circumstances it may "become necessary to divide the amount of such general insurance;" or, in what proportions such division shall be made; or, what shall be done with "*the property covered by such general insurance and not included in this (specific) policy*" after "*it becomes necessary to divide the amount of such general insurance*," before proceeding to apportion the loss "*in the proportion that the sound value of such (specific) property, in excess of the insurance covering it only, bears to the sound value of all the property covered by*

*such more general policy or policies, in excess of all specific insurance thereon,"* thus leaving us in the dark as to how we should proceed with the apportionment.

**2140.** The following example would seem to be a test as to the correctness of this *as a rule* :—

EXAMPLE.

Company A on merchandise.....	\$1,000	Value.....	\$2,000
"    B    "    "    and fixtures, 500    "		fixtures.....	1,000
Loss on merchandise, \$1,000; on fixtures, \$350.			

APPORTIONMENT UNDER FIRST CLAUSE.

As company B is considered contributive liability to the full amount, we find that the insurance upon merchandise was A \$1,000, and B \$500; total, \$1,500; loss, \$1,000, of which A will pay two-thirds, say, \$666.66, and B one-third, or \$333.34. This will leave to B the difficult task of paying a loss on fixtures of \$350 out of his unexhausted fund of \$166.66, while merchandise is paid in full, and company A rejoices in a salvage of thirty-three per cent. of its policy.

**2141.** But, as this will not do, we are to resort to the *second clause* and make an entirely new adjustment, upon a change of base, as follows :—

APPORTIONMENT UNDER THE SECOND CLAUSE.

Company B covers merchandise ("specific property") in the proportion that \$1,000 ("sound value of the specific property in excess of the specific insurance thereon") bears to \$2,000 ("sound value of all of the property covered by the general insurance in excess of the specific insurance"), which will make the ratio 50 per cent. This will make B's insurance on merchandise \$250, resulting as follows :—

A and B, on merchandise, \$1,250; pay loss of \$1,000, or 80 per cent.
A pays \$1,000 at 80 per cent., will be \$800
B "    250 " 80 "    "    "    200—\$1,000

This will leave for B the sum of \$300, out of which to pay loss on fixtures, \$350; thus exhausting B with a loss of indemnity to the insured of \$50, while company A slips quietly out with a salvage of \$200; thus producing the same result and liable to the same criticisms as rule RULE IV.

**2142. THIRD CLAUSE.**—If the two preceding rules cannot be made to apply satisfactorily, a *third* is offered as a substitute, which, paraphrased, would seem to mean as follows:—

If the value of the specific property *does not exceed* the amount of *specific* insurance thereon, then the *general* insurance shall contribute in proportion as the *value* of the specific property bears to the value of all of the property—

which is the “READING RULE” (**2101.**) and liable to all its objections. But if the value of the *specific* property *should exceed* the specific insurance, what then?

**2143.** The author of this RULE VI. is evidently endeavoring to unravel the problem of compound policies (CLASS II.); but, being hampered by the ALBANY RULE as a basis, he loses sight of the true principle of contribution, and the result is that his apportionment of contributive liability is wrong in consequence of his ignoring the liability of the compound policy upon its specific item first, and the remainder only to be subject to contribution with the specific policy. (**2064.**)

He also ignores the important fact, as correctly stated by Mr. FINN, “*that the value of the property at risk is never an element entering into the apportionment of loss under policies not subject to average.*” (**2108, 2129.**)

In this case, correctly apportioned *by the loss*, B would first pay on fixtures \$350, and then contribute with A in its balance, \$150, on merchandise. The happy result would be that the insured would get full indemnity, both companies would make a salvage, and there would be no necessity for the application of the *second* or *third* clauses.

## RULE VII.\*

**2144.** (1.) If, at the time of loss, the insured shall hold a general policy or policies, covering in one sum more than one specific property or interest, and shall also have a policy or policies covering only a specified property or interest, which is included within range of the more general policy, in such case the loss on the specific property or interest shall be *first* adjusted *pro rata* among all the insurance covering the same, be the policies general or specific.

**2145.** (2.) But if the loss on the article or articles, not covered by the specific insurance, shall require a greater sum than is left of the general insurance, after the adjustment as aforesaid, then, to make up such deficiency, so much of the general insurance shall be released from contributing to the specific property, and an equal amount of the specific insurance (not before appropriated) shall take its place in payment of the specific articles. If there be different specific insurance interests affected by such re-adjustment, they shall contribute to make up the amount required, *pro rata* of the amounts they would otherwise have to pay.

**2146.** The *first clause* is the ALBANY RULE to its full extent, and liable to all of its objections; but it is modified by the *second clause*, which is a proviso that when the ALBANY RULE fails to give full indemnity, a re-assessment shall be made releasing the compound insurance when over-assessed, and compelling further contribution from the unappropriated *specific* policies. This rule would seem to confine the re-assessments to the *specific* insurance yet unexhausted, though any unapplied general policy would be equally liable.

**2147.** The following example, *adjusted under this rule*, will test its operation:—

Company A on merchandise.....	\$500	Loss .....	\$200
“ B “ and fixtures, 500		“ on fixtures, 450	

By the *first clause* of the rule the “*specific* policy is to be *first* adjusted *pro rata* among all policies covering the same.” Hence, the *specific* must be attended to *first*, with the following result:—

A and B on merchandise \$500 each, equals \$1,000, on which the loss is 20 per cent. ; each pays \$100.

This will leave company B just \$400, out of which to pay its specific loss on fixtures, \$450.

\* The late Geo. P. Hope is supposed to have been the author of this Rule.

**2148.** But, as this cannot be done, we come to the *second clause*, where the *proviso* makes it necessary to "release B from contributing to the specific policy" to the amount necessary to complete the indemnity upon its specific item, *fixtures*; this will be \$50. The re-adjustment will then stand as follows:—

A on merchandise.....	\$150
B " " .....	50 on fixtures, \$450.

The result is that B is exhausted, while A makes a salvage out of B of \$31.82, as will be shown below.

**2149.** The principle of *re-adjustment* of the *insurance*, when necessary, contained in the *second clause*, is correct; but the mistake here is in applying the process of the ALBANY RULE to the *first* assessment, and making this result the basis of the subsequent calculations, thus ignoring the distinguishing feature of compound policies covering *specific items* (**2070**), and in this instance giving merchandise full indemnity at the expense of fixtures.

**2150.** The correct apportionment *in the ratio of the loss* would be for B to *first* pay on its *specific* item, fixtures, \$450, and then contribute with A on merchandise for the balance, \$50. The result would be as follows:—

A and B cover conjointly on merchandise, \$550, to pay a loss of \$200.

Then, as 550 : 200 :: 50 equals \$18 18 2-11 for B.

550 : 200 :: 500 " 181.81 9-11 " A.

Total.....\$200.00

This would give the final contribution as follows:—

A pays on merchandise....	\$181 82,	\$181 82
B " " ....	18 18, fixtures, \$450—	468 18

Total payment...\$200 00 " \$450— \$650 00

**2151.** Both companies making a salvage; but B, being liable upon *two* items—one specifically—pays more as a consequence of writing *two risks* for one premium.

# RULE VIII.

## FELLOWSHIP OR PROPORTION.

**2152.** The following method is rather an arithmetical process to reach a desired individual result where the aggregates are known, than a rule of adjustment, being simply the ordinary *rule of proportion* of the arithmetic, commonly termed "fellowship," or the "rule of three." The proposition will stand as follows:—

As the aggregate insurance is to the aggregate loss, so will be the individual insurance of each policy to the amount thereof.

### EXAMPLE 1.

Company A covers building .....	\$1,000 00
" B " " .....	1,500 00
" C " " .....	2,000 00
Aggregate insurance .....	\$4,500 00

*Proposition.*—What does each company insure, supposing the loss to be \$1,250 in aggregate?

*Process:* As \$4,500 insurance is to \$1,250 loss, so will be the amount of each policy to its respective liability:—

As 4,500 : 1,250 :: 1,000 .....	= \$277 78 for A.
4,500 : 1,250 :: 1,500 .....	= 416 66 " B.
4,500 : 1,250 :: 2,000 .....	= 555 56 " C.
Totals... \$4,500 .....	= \$1,250 00

### RULES FOR PERCENTAGE.

**2153.** The same result can be obtained by *percentage*:—

*First*—By proportion: As the aggregate amount of insurance is to the loss, so is 100 to the percentage.

As 4500 : 1250 :: 100 = 27.777 + the percentage.

**2154.** Or, *Second*—Divide the amount of loss, with two ciphers added, by the aggregate amount of insurance; which is precisely the same as the first rule, as multiplying by 100 is simply adding two ciphers. When the percentage is thus found, multiply the amount of each policy by the percent, and the contributive liability will be the result.

### EXAMPLE 2.

Company A .....	\$1,000 × 27.777 + gives	\$277 78—
" B .....	1,500 × " "	416 66 +
" C .....	2,000 × " "	555 56—
\$4,500 × " "		\$1,250 00

It should be borne in mind that when the loss is in excess of the insurance, this method, or any other as to that matter, is inoperative, as each policy pays its own loss independently of the others.

### TO FIND SPECIFIC INSURANCE UNDER COMPOUND POLICIES

BY RULE VIII.

**2155.** This principle has been extensively used to find the respective amounts of *insurance* under compound policies upon each of the several items, from the aggregate amount of *loss* upon *all* of such items. The *process* is the same as in ordinary *proportion*, except that the statement of the proposition is *reversed* in this case. As the aggregate loss is to the aggregate insurance, so will be the specific loss upon each item to the insurance thereon.

Using the same example as in the previous case, the proposition reversed will be as follows, :—

#### EXAMPLE 1.

What will be the *insurance* of each company, the aggregate insurance being \$4,500, and the *loss* \$1,250 ?

PROCESS.—As 1250 loss is to 4500 insurance, so is the amount of loss, under each policy to the insurance; or,

As 1250 loss :	4500 ins. ::	277.78 per ct. ....	\$1,000 insurance	policy A.
1250 " :	4500 " ::	416.76 " .....	1,500 " "	B.
1250 " :	4500 " ::	555.56 " .....	2,000 " "	C.

Or, to get the percentage, the proposition will be—

As 1250 loss : 4500 ins. :: 100 result 36 per cent.

This, multiplied by the loss on each policy, will give its specific amount of insurance.

Or, simply divide \$4,500, gross insurance, by \$1,250, the aggregate loss, which gives the same result as the latter process.

**2156.** The following example of *mixed* policies will still further illustrate the principle :—

EXAMPLE 2.

Several companies cover conjointly to the amount of \$2,000 upon subjects the losses upon which, in the aggregate, reach \$7,928.14. Under the rule (2154) the percentage would be 25.277.

PROPOSITION.—What will be the insurance upon each of the following items of loss?—

On engine,	loss \$2,000.00 @ 25.277 per cent., gives insurance	\$504.54
" machinery,	" 5,328.14 @ " " "	1,344.10
" pulleys	" 200.00 @ " " "	50.45
" shafting, etc.	" 400.00 @ " " "	100.91
Total loss.....\$7,928.14 @ " " "		\$2,000.00

In connection with *percentage* it is frequently necessary to extend the division into *thousandths*, or beyond, in order to get correct results.

While the *proper* application of this rule for finding the specific insurance by the aggregate loss will always produce results correct in themselves, yet, when *improperly* applied for this purpose, it will invariably lead to inequitable conclusions; especially when some of the policies in interest would become exhausted before payment of full indemnity—a contingency for which this rule makes no provision, the consequence being a claim for contribution from the insured, or some of the other policies, where there is no liability. And, where re-apportionment is resorted to in order to make the indemnity of the insured complete by re-assessments upon the unexhausted insurance (2028), the results would still be inequitable *as between the companies*, because the *basis* of such re-apportionment would not be correct. (2289, 2309.)

2157. *Any rule whereby non-concurrent compound policies, CLASS II. (2085), are made to insure pro ratu specific amounts upon the several subjects covered by them, will necessarily be incorrect, as being diametrically opposed to the fundamental principle of this class of insurance, which is "liability to its full, not simply pro ratu amount, upon either item under its protection;"* which principle is not affected by the inability of the policy to meet its obligation in full upon each subject. In such cases it must meet the loss, so far as it is able, in the

*ratable* proportions of its total amount, as indicated by the loss upon each item.

**2154.** In illustration of the failure of this *pro rata* Rule to work equitably with compound policies of CLASS II., *Statement* xix. (**2224**) has been selected, which, being there worked out, will obviate the necessity of repeating the process here.

## EXAMPLE 1.

Company A covers pork.....	\$5,000	Loss on pork..	\$10,000
" B " pork and flour.....	5,000	" " flour..	3,000
" C " pork and grain.....	5,000	" " grain.	5,000
" D " pork, flour and grain, 5,000		Total loss..	\$18,000

The apportionment of *insurance* among the several companies, worked out by this *pro rata* RULE VIII. would give the following results :—

Company A, <i>specific</i> , covers pork.....	\$5,000
" B, <i>general</i> , covers pork and flour.....	5,000

On which the loss is, respectively, \$10,000 and \$3,000—\$13,000

We find the *insurance* on each item, as follows :—

$$\begin{aligned} \text{On pork, as } 13,000 : 10,000 :: 5,000 &= \$3,846 \text{ } 16 \\ \text{flour, " } 13,000 : 3,000 :: 5,000 &= 1,153 \text{ } 84 \end{aligned}$$

$$\text{Total.....} \$5,000 \text{ } 00$$

Or simply,  $\frac{1}{3}$  on pork, and  $\frac{2}{3}$  on grain.

Company C, <i>general</i> , insures pork and grain .....	5,000
--	-------

On which the loss is, respectively, \$10,000 and \$5,000.—15,000

We find the *insurance* on each item, as follows :—

$$\begin{aligned} \text{On pork : as } 15,000 : 10,000 :: 5,000 &= 3,333 \text{ } 33 \\ \text{grain : as } 15,000 : 5,000 :: 5,000 &= 1,666 \text{ } 67 \end{aligned}$$

$$\text{Total.....} \$5,000 \text{ } 00$$

Or simply,  $\frac{2}{3}$  on pork, and  $\frac{1}{3}$  on grain.

Company D, <i>general</i> , insures pork, flour, and grain.....	5,000
---	-------

On which the loss is, respectively, \$10,000, \$3,000, and

$$\$5,000.....18,000$$

We find the *insurance* on each item as follows :—

$$\begin{aligned} \text{On pork ; as } 18,000 : 10,000 :: 5,000 &= \$2,777 \text{ } 78 \\ \text{flour ; as } 18,000 : 3,000 :: 5,000 &= 833 \text{ } 33 \\ \text{grain ; as } 18,000 : 5,000 :: 5,000 &= 1,388 \text{ } 89 \end{aligned}$$

$$\text{Total.....} \$5,000 \text{ } 00$$

Or simply, 10-18 on pork, 3-18 on flour, and 5-18 on grain.

From the foregoing we get the following table of—

APPORTIONMENT OF INSURANCE.

Companies.	Pork.	Flour.	Grain.	Totals.
Company A.....	\$5,000 00	.....	.....	\$5,000 00
" B.....	3,846 16	\$1,153 84	.....	5,000 00
" C.....	3,333 33	.....	\$1,666 67	5,000 00
" D.....	2,777 78	833 33	1,388 89	5,000 00
Total insurances..	\$14,957 27	\$1,987 17	\$3,055 56	\$20,000 00
To pay losses....	10,000 00	3,000 00	5,000 00	18,000 00

**2159.** When it is remembered that *the amount of insurance is the maximum of liability (1656)*, and that compound policies always float with the loss upon their several subjects to give full indemnity within their respective amounts, but brief consideration will be necessary to detect the erroneous results of the above apportionment, and to recognize the unfitness of the pro rata rule when applied to compound policies of this class. And should re-apportionment be resorted to, to complete the indemnity as under Rule VI. (**2143.**) the basis being erroneous, the result under re-apportionment must be wrong. Take the item *grain*, covered by policies C and D. To C it is a *specific item*, and the general loss being less than the aggregate insurance, must be first paid to its full liability (**2063**), or one-half of the loss, \$2,500. Hence, under no circumstances could the insurance by C on *grain* be less than its liability, \$2,500, though it might be more. And as D, under the contingency of the loss, also becomes *specific* upon *grain* (**2071**), it must make good the remainder of the loss, \$2,500. Hence, its insurance upon the *grain* could never be less than the amount for which it becomes liable, and which would yield full indemnity to the insured; so also with B and D on *flour*; they both become *specific* upon this item, and must pay accordingly, the liability of each company being \$1,500; hence, the insurance by either could not be less than that amount. So again with Company D, which covers each of the subjects.

It is a co-insurer with B and C, on their *specific items*, and must contribute with them: \$1,500 with B, and \$2,500 with C, and pay these amounts before contributing with A specific on *pork*, leaving the sum of \$1,000 as its contributing *insurance* on that item.

The *ratable* proportions (2046) of contributing insurance of each policy upon the several subjects under its protection, as indicated by the loss, is as follows:—

## EXAMPLE 2.

TABLE OF CONTRIBUTING INSURANCE IN THE RATIO OF LOSSES.

Companies.	Pork.	Flour.	Grain.	Totals.
Company A.....	\$5,000 00			\$5,000 00
" B.....	3,500 00	\$1,500 00		5,000 00
" C.....	2,500 00		\$2,500 00	5,000 00
" D.....	1,000 00	1,500 00	2,500 00	5,000 00
Insurance.....	\$12,000 00	\$3,000 00	\$5,000 00	\$20,000 00
Pays. ....	10,000 00	3,000 00	5,000 00	18,000 00

From a comparison of the results of these two tables, it will at once become evident that the liability of a compound policy of CLASS II, upon its *specific item* does not depend upon any rule of proportion, but is fixed and determined solely by the amount of loss. (306, 2048, 2070.)

**2160.** This Rule VIII., on the other hand, properly applied to partial losses under compound policies of CLASS I., general concurrency, will always produce results in accordance with apportionment by the amount of loss, because the *loss is the basis of the proportions*, and the *insurance is concurrent*, as the following will illustrate:—

## EXAMPLE 3.

Company A on wheat.....	\$5,000	Loss.....	\$6,000
" B on flour .....	5,000	" .....	5,000
" C on wheat and flour, 5,000		" on both, 11,000	

First apportionment of insurance—*wheat*:—

Company A, specific.....	\$5,000 00
" C, as 11,000 : 6,000 :: 5,000 =	2,727 28

Total insurance.....\$7,727 28  
To pay loss of \$6,000.

Second apportionment of insurance—flour :—

Company B, *specific* .....\$5,000 00  
 " C, as 11,000 : 5,000 : : 5,000 = 2,272 72

Total insurance .....\$7,272 72

To pay loss of \$5,000.

For the result of the *contribution*, reference is made to *Statement xiii.* (2196.)

From this example, it is evident that, even under *concurrent insurance*, compound policies always cover their several subjects *pro rata*, in the ratio of the losses thereon. (2047.)

EXAMPLE 4.

**2160a.** By the *improper* application of this RULE VIII, *contributive insurance* has been confounded with *contribution*—that is, the amount liable to be paid. Thus in Example 3, the *contributive insurance* of company C has been considered to be the amount which it must *pay*, leaving the co-insurers liable only for the balance ; whereas that amount is the sum of its *insurance* only, in which it contributes with concurrent subjects of the other companies, making a marked difference in the final result.

The *improper* application of the rule would give the following table of final contribution :—

CONTRIBUTION.				
Companies	Wheat.	Flour.	Totals.	Salvage.
Company A....	\$3,272 72	.....	\$3,227 72	\$1,727 28
" B....	.....	\$2,727 28	2,727 28	2,272 72
" C....	2,727 28	2,272 72	5,000 00	.....
Totals....	\$6,000 00	\$5,000 00	\$11,000 00	\$4,000 00

By reference to *Statement xiii.* (2209), the error in this apportionment will be self-apparent.

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## ENGLISH RULES. IX.

**2161.** So wide is the divergence between the systems of fire underwriting, practiced in this country and in England, that the rules of either are entirely unfitted for practical application in the apportionment of insurances under the policies of the other, except in so far as the general principles underlying the contract of fire insurance may be operative in both; but, as a principle, the English rules are much more equitable as between the insured and the insurers, the basis of all of them being *full indemnity to the insured* under the policy, leaving any matters of dispute in the contribution to be adjusted among the offices interested.

As between co-insurers, however, it strikes the American underwriter that the English code of rules for the apportionment of *contributive liability* is ponderous, arbitrary, and involved, and lacking in that conciseness essential to a clear comprehension of a subject of so much importance. The late Mr. HORE said of them :—

“ Rules (made by the office from time to time) exist for the regulation of apportionments, but they are all more or less of an empirical nature. In many cases they give anomalous and inequitable results; frequently they are interpreted by different offices as justifying different apportionments of the same loss; sometimes they are disregarded altogether; and they fall very short of being applicable to all possible cases.”

In this same connection, Mr. CHRISTIE, formerly of the Sun Fire Office, London, also said :—

“ The different systems in operation are so unnecessarily complicated, and the machinery by which each is set in motion so rude and unconnected that the wonder is, not that any attempt at improvement has given rise to a word of warning, but rather that the cumbersome construction should have lasted so long.”

It would thus seem that our transatlantic *confrères*, though many years our seniors in the practice of underwriting, have met with no better success than ourselves in solving the problem of equitable contribution, and that their offices take quite as much liberty with their existing rules as do our adjusters with ours.

**2162.** The preponderance given to the average policy in practice, by which it is permitted to override the conditions of

the specific, when in contact upon the same loss, and the arbitrary manner of apportioning liability among average policies themselves—by *ranges* instead of subjects—when not fully concurrent, must always result, as Mr. HORE said, “inequitably” to some of the parties in interest, usually to the “lesser ranged” policies, and the responsibility for such want of equity will, as usual, be thrown upon the insured for “not having his insurances wisely arranged;” and the offices will continue to be called upon “to educate the insured as to the manner in which they should arrange their insurances,” when it is well known that ninety-nine out of every hundred forms of policies emanate from the offices themselves, the insured seldom furnishing more than the subject, and its locality. Were it otherwise, it is simply optional with the companies to write the policy as offered or not; they could decline to write if the form should be objectionable. (2113.)

In speaking of the insured under these circumstances, Mr. CHRISTIE, cited above, said:—

“At present he enjoys shelter under sufferance, because the custom of the offices, as to ranges, etc., is inexplicable to common sense, and he is considered not bound to know the sinuosities of an absurd system, which has no strict relation to figures (though it mainly deals with them), and cannot be explained by them.”

**2163.** This divergence in practice in the two countries originates in the marked and fundamental difference between the respective policies, which have little or no similarity in form and none in their bearing, as between the companies, under adjustments of losses. (308.)

The *average* or *floating* policy forms much the larger portion of the mercantile insurance in England; hence, the majority of their rules have reference to this class—while, in this country, the *average policy*, as used in England, is little used, mostly by English agencies, in the larger cities; and adjustments of *floating* policies “*subject to average*,” are made entirely upon the principle of independent liability, when in contact with other insurance. (417.)

The following are some of the English rules analagous to and more or less in harmony with American practice :—

FIRST—AS TO THE INSURED.

**2164.** "As the insured will be entitled to all of his securities, the claim must be so conducted as to give him the greatest benefit upon them."

This is equivalent to all of the leading decisions of American courts upon this point. **(2059.)**

**2165.** "As the insured must be no sufferer upon either item of property so long as any part of his *specific* insurance upon it remains unpaid, that specific insurance must be charged with the above excess."

In this connection, it must be understood that the *specific* insurance referred to is any insurance, specific or compound, *not subject to average* **(308)**. With this qualification, this rule is equivalent to the construction of the contribution clause. **(2059.)**

**2165a.** "In no case must the contribution clause be construed as to throw loss upon the insured against which he would have been fully protected had his policy been free from that clause." **(2043.)**

This is equivalent to the ruling in 6 Cowan, before quoted. **(2013. 2059.)**

SECOND—CONCURRENT POLICIES.

**2166.** This rule applies when the policies are concurrent and are all *specified*, or all subject to *average*, but not when the two are combined upon the same loss.

1. "The policy with the widest range (the greatest number of items) included in one sum is held to be liable for the whole amount upon any one item."

2. "The policy with the more limited range (lesser number of items) is equally liable for its whole sum upon each item within its range."

3. "Each policy is held liable to pay upon a partial loss upon one of its items, in proportion to its respective amount."

The principles of this rule are equivalent to those embodied in compound policies, Section **2062**.

THIRD—SPECIFIED AND AVERAGE POLICIES.

**2167.** (1) "When *specified* and *average* policies are found upon the same loss, the specified policy is, by agreement, first exhausted, before

average policies can be called upon to contribute, as the latter, by *their* terms, are held to cover only the *excess* over and above the specific insurance."

(2) "Where the loss may be upon articles other than those covered by specified policies, the amount of *specified* insurance is to be deducted from the average policies, and the ordinary average apportionment is made upon the remainder." (For a definition of "specified policy" see 308.)

The principle contained in section 1 was acted upon in this country for many years, where specific and compound policies were in contact, without reference to the marked difference between the American "specific" policy (306) and the English "specified" policy (308), or to the absence of the average clause; and was, by many, confounded with the ALBANY RULE, which is its antipode, and was adopted to counteract the effect of this very rule, by first exhausting the compound policy and thus relieving the specific. (2136.)

**2168.** The following is an example of *average* and *specified* policies combined upon one risk :—

A covers \$2,000 on sugar,	in warehouse Nos. 1 and 2
B " 1,500 on sugar and coffee	" " " 2 and 3
C " 1,750 " "	" " " 1, 2, and 3
all subject to average.	
D covers \$1,000 on sugar, coffee, and spices,	in warehouse No 2
E " 1,000 on sugar and spices	" " " 2
F " 1,000 on coffee	" " " 3
without the average clause, or <i>specified</i> .	

**2169.** By the third English rule (2167) the *specified* policies D, E and F, would be first exhausted, if necessary to meet the loss; then the average policies would contribute, under Rule 5 (272), for the remainder of the loss, if any, by the extent of "range" of each policy; the smallest, A, being first called upon, and then the next smallest B, so that it might be that the policy of the "widest range" (covering most items), C would escape entirely. The *specified* policies would pay in full, while the average policies would share their several portions with the insured as co-insurers.

**2170.** This example in American practice, falls under compound policies, CLASS II., and would be adjusted accordingly. Each policy would pay its ratable proportion upon each concur-

rent item, under its own specific conditions, and without reference to the average clause, which would be operated only between the average policy and its holder.

Much confusion resulted in early days from attempts to apply English rules to the apportionment of losses under American policies, where the system of business is so entirely different that the rules have no application, as is evident from the above cited example, which is among the simplest under English practice. (Rule V **2130.**)

#### FOURTH—NON-CONCURRENT AVERAGE POLICIES.

**2171.** "To work from the widest range policies in company with the most limited, and then take the balance left of each of the wider policies, after deducting the first settlement, to rank with the other policies for the remaining portion of the loss."

This rule, though obscurely worded, evidently applies to compound policies, CLASS II., in American practice, and is exemplified in *Statement* xxi. (**2235.**)

#### FIFTH—CONCURRENT AVERAGE POLICIES.

**2172.** "The policies of the most limited range are all to be treated as specified policies (3), in the order of their extent, and are to be called on first, in that order, to make settlement; while those of greater extent are only brought forward in the same order to cover any excess of loss remaining after exhausting the lesser ranged policies."

A difficulty frequently occurs under this rule, when two policies of *the same range* are found—which shall be sacrificed first?

**2173.** Speaking of this, and kindred rules, Mr. Atkins said—

"Why the smallest range should be called on to pay, while the larger, equally covering the same goods, often wholly escapes, is a question to which no other answer has ever been given than that it is convenient, under existing practice, that it should do so. All policies have received the premium, and cover the same goods, and should doubtless share the loss; but it has been found the readiest, if not the fairest solution of all difficulties, to adopt the existing rule; and it may be added, that in all cases it is a rule much easier for the best-informed to describe than to justify."

There is no case in American practice where this rule can apply.

## CONTINENTAL RULES.

## "UNDER AVERAGE."

## FIRST—CONCURRENT POLICIES.

**2174.** All Continental policies are by law subject to average.

"If the sums insured exceed the value of the property covered, the loss is to be shared pro rata with the insured."

"If the sums insured do not exceed the value of the property covered, the policies pay such proportion of the loss, as the sums they respectively insure bear to the value of the property covered by the insurance."

## SECOND—NON-CONCURRENT POLICIES.

**2175.** "Divide the sums insured pro rata with the values of the ranges (numbers of items) to which they respectively apply. Or, multiply the value of each item by the ratio of liability of the policies respectively applying there to, and the sum insured by each policy on each item will be obtained."

"In case of any item on which the sums thus shown to be insured exceeds the value, the loss is divided pro rata with the sums insured."

In case of any items on which the sums thus shown to be insured do not exceed the value, the policies covering thereon pay such proportion of the loss as the sums they respectively insure thereon bear to the value thereof.

These are the American rules in principle, omitting the average feature when not included in the policy. The mode of finding the specific insurance under the first clause of the second rule above, is the same as under English practice. All adjustments are made by values and not by losses.

**2176.** In most places upon the Continent the governments have provided police supervision, and a certified specification or inventory is made obligatory upon the insured, and in many places this inventory must be further approved by the police authorities before insurance can be effected; this the more especially in those countries where insurance is made obligatory by law. Hence, the complications so common to other countries in the adjustment of losses cannot arise to any extent. (70.)

## EXAMPLES OF ADJUSTMENTS OF LOSS.

In illustration of the foregoing principles of contribution among co-insurers, examples of adjustments of losses under various phases will be given as *Statements*, numbering from I. to XLI., with several subdivisions to each, embracing every form under which policies can be called upon to contribute. Commencing with

## SPECIFIC POLICIES.

## RULE.

**2177.** Apportionment under SPECIFIC POLICIES is a simple matter of value of property lost or damaged, and the relation such loss or damage bears to the amount of insurance. Underwriters pay all loss or damage within that amount.

If there be more than one policy, the aggregate loss is divided *pro rata* among the co-insurers by Rule VIII. (**2152.**)

## STATEMENT I.

**2178.** *Partial loss or damage*, under several specific policies, *not* entirely concurrent, on building and stock, with the contribution of the several companies.

## CLAIM:

Damage to building per appraisalment.....	\$225 00
Sundry repairs per voucher.....	16 70
Total damage to building.....	\$241 70
Damage to stock as per appraisalment.....	18 00
Total damage.....	\$259 70

## INSURED AND APPORTIONED AS FOLLOWS:

Name of Company.	Building.		Stock.		Total Paym't
	Ins. on Build'g	Payson building.	Ins. on Stock.	Payson Stock.	
Company A.....	\$500	\$26.85	\$300	\$0.42	\$27.27
" B.....	.....	.....	2,500	3.50	3.50
" C.....	500	26.85	900	1.32	28.17
" D.....	500	26.85	300	.42	27.27
" E.....	250	13.43	2,650	3.73	17.16
" F.....	1,000	53.73	.....	.....	53.73
" G.....	500	26.84	2,800	4.00	30.84
" H.....	1,000	53.72	600	.88	54.60
" I.....	250	13.43	2,650	3.73	17.16
Total.....	\$4,500	\$241.70	\$12,700	\$18.00	\$259.70

In this case, the damage to the stock being small and easily ascertainable, no account was taken of the sound goods. The amount of the liability of the insurance was reached by direct estimate of loss, which consisted entirely of damage to the subjects insured, without any complete destruction of any part of the property. The ratable proportion of each company was ascertained by a pro rata division of the losses among the several amounts insured.

## STATEMENT II.

**2179.** A simple *specific* policy, in which several companies are supposed to be interested *concurrently*, with the apportionment or *contribution* of each. This forms part of the preliminary proofs, as *Schedule B*.

## RECAPITULATION.

Amount of stock per inventory, Jan. 1, 18—; vouchers submitted.....	\$10,000 00
Purchases from Jan. 1, 18—, to date of fire March 27, 1871; vouchers submitted.....	2,500 00
Total stock.....	\$12,500 00

## DEDUCTIONS.

Sales for cash or credit, from Jan. 1, 18—, to March 27, 18—, per vouchers submitted.....	\$4,200 00
Less estimated profits, 25 per cent....	540 00
	3,360 00
* Stock on hand at time of fire.....	\$9,140 00

## FURTHER DEDUCTIONS.

Deterioration in value, shop-worn stock, etc, 10 per cent.....	\$914 00
Articles used in claimant's family, or taken out for any purpose, not charged in account.....	100 00
Stock saved in good order, per invoice, \$6,045.27— less 10 per cent. †.....	5,440 75
Damaged stock estimated by appraisers at sound value.....	660 25
	7,115 00
Total loss.....	\$2,025 00

## INSURED AND APPORTIONED AS FOLLOWS:—

North American Insurance Co.....	\$2,500, pays $\frac{3}{13}$	\$778 85
Jamestown " ".....	2,500, " $\frac{3}{13}$	778 85
Morris " ".....	1,500, " $\frac{3}{13}$	467 30
Total insurance.....	\$6,500, pays	\$2,025 00

\* The amount of "stock on hand at the time of the fire," the amount of total loss, and the sum claimed of each company, are called for in the respective proofs.

† Deterioration having been charged on the "stock on hand at the time of the fire," it must be credited on the amount of sound stock saved from the fire. (1740.)

### SPECIFIC INSURANCE

. \$10,000 00  
 ;  
 . 2,500 00  
 -----  
 \$12,500 00

3,360 00  
            
\$9,140 00

Company A covers fixtures \$2,000, on which the loss is \$1,500, and contributes accordingly. (2069.)

Here we have *double* specific insurance, that is, two companies covering the same subject in specific sums. They contribute in the ratio of their several amounts which gives the following:—

7,115 00

---

\$2,025 00

This gives the following apportionment of insurance :—

$$5,000 \times 75 = 3,750 \text{ " B.}$$

82,025 00

of total loss,  
cofs.  
ne of the fire,"  
48.)

## STATEMENT IV.

## CONCURRENT SPECIFIC POLICIES.

**2181.** Total insurance, in sixteen companies, \$45,500.

Total loss, \$44,055.73, or 96.82 + per cent.

## STATEMENT RENDERED.

Amount of inventory, March 1, 18—.....	\$32,150 39	
LESS shelving, office and store furniture, counter, tools, scales, and signs, not covered.....	2,331 66	
		\$29,815 73
Purchases since date of inventory to day of fire, per merchandise account on ledger.....	\$137,312 63	
LESS goods in cellar adjoining, and in shed on rear of lot, included in mer- chandise account, but not covered by the policy.....	\$4,464 95	
Goods returned on bills of purchases....	665 06	
		5,130 01
		132,182 62
Total stock.....		\$161,998 35

## DEDUCTIONS.

SALES from date of inventory to day of fire, per merchandise account...\$137,557 60	
Less allowances to purchasers.....	239 38
	\$137,318 22
Estimated profits, 17½ per cent. ( <b>1748.</b> ).....	20,451 65
Net cost of goods sold.....	\$116,866 57
Goods saved, as sound, per schedule.....	1,070 00
	\$117,936 57
Amount of stock totally lost.....	\$44,061 73
Add freight and expenses, 2.55 per cent. ( <b>1740.</b> ).....	1,123 58
Total amount of stock lost, invoice value.....	\$45,185 30
Deduct for depreciation in value, 2½ per cent. ( <b>1746.</b> ).....	1,129 63
Net loss and damage.....	\$44,055 73

## APPORTIONMENT AND CONTRIBUTION.

2 companies, \$5,000 each, pay \$4,841.29 each—total.....	\$9,682 58
4 " 3,000 " 2,904.78 " " .....	11,619 12
8 " 2,500 " 2,420.64 " " .....	19,365 12
1 " 2,000 " .....	1,936 52
1 " 1,500 " .....	1,452 39
Totals....\$45,500 .....	\$44,055 73

## STATEMENT V.

## SPECIFIC POLICIES.

**2182.** The following is an actual adjustment of loss at the Chicago fire, under a number of specific concurrent policies:—

Inventory, July 1st, 1871,		
Store.....	\$62,791 21	
Freight on same, per acc't..	668 49	
	<u>\$63,459 70</u>	
Less $7\frac{1}{2}$ per cent. on \$62,791.21 depreciation and discount.....	4,709 84	
	<u>\$58,749 86</u>	
Purchases July 1st, to date		
of fire.....	\$184,011 16	
Less 5 per cent. on \$60,000 credit purchase.....	3,000 00	
	<u>\$181,011 16</u>	
Less goods in transit.....	5,058 10	
	<u>\$175,953 06</u>	
Freight on same.....	1,334 20	
	<u>\$177,287 26</u>	
		<u>\$236,037 12</u>
Sales July 1st, to date of fire.....	\$147,637 71	
Less profits at 18 1-16 per cent. gross.....	26,667 14	
	<u>120,970 57</u>	
In store at time of fire.....		<u>\$115,066 55</u>
Factory inventory, July 1st, 1871.....	\$49,694 90	
Purchases and labor acc't. to date of fire.....	26,136 93	
	<u>\$66,831 83</u>	
Sales to date of fire.....	\$33,240 14	
Less profits at 18 per cent. gross.....	5,983 23	
	<u>\$27,256 91</u>	
In factory at time of fire.....		<u>\$39,574 92</u>
		<u>\$154,641 47</u>
Appreciation on 600 cases boots, at \$4.....	\$2,400 00	
" " rubber goods.....	3,492 00	
	<u>5,892 00</u>	
Total stock.....		<u>\$160,533 47</u>

Less goods saved .....	\$13,438 46	
Freight on same .....	142 87	
	<hr/>	\$13,581 33
Less cost of removing .....	180 00	
	<hr/>	\$13,401 33
Total loss on stock .....		\$147,132 14
Value of tools, as per inventory .....		693 95
Loss on fixtures and furniture, adjusted at .....		1,500 00
		<hr/>
Total loss .....		\$149,326 09
Insurance on stock and tools .....	\$113,500	
Insurance on stock without tools .....	35,000	
Insurance on office furniture and fixtures .....	2,500	

**2183.** To this adjustment are appended a criticism and another adjustment of the same loss by R. H. LAWRENCE, Esq., adjuster, of Chicago, whose views as to *freight discounts, depreciation, and appreciation*, though differing somewhat, more nearly correspond to those set forth under those heads than do those of the original adjustment. (**1730** and **1737**.) These remarks of Mr. LAWRENCE will apply with equal force to the next statement.

**2184.** Mr. LAWRENCE says of this statement:—

"My adjustment of the loss differs from that of the adjuster's, in that it deals only with the goods on hand at the time of the fire, which, I apprehend, are the sole object of interest to the underwriters. Consequently the 'depreciation,' 'freight,' and 'discount,' deduction and addition, apply only to the proportionate amount of goods of the several classes on hand when the loss occurred. And these deductions and additions should be carried out into the 'goods saved,' as well as those lost."

"The expression 'profit 18 per cent. *gross*' is incorrect. The profit is made upon the *cost* of the article sold and not upon the price obtained for it."

"Of course the profit is upon the merchandise itself, entirely irrespective of the cost of storing, insuring, and selling, and the adjuster has nothing to do with any such matters in determining the sum to be deducted from 'sales' to ascertain the original *cost* of such sales, which is what is required to do to show what *value* of the purchases were still in stock."

## STATEMENT VI.

**2185.** *As adjusted by R. H. LAWRENCE, adjuster.*

1871.		
July 1. Inventory.....	\$62,791 21	
O ct. 7. Purchases to date.....	\$184,011 16	
Less goods in transit.....	5,058 10	
	<u>\$178,953 06</u>	\$241,744 27
" 7. Sales to date.....	\$147,637 71	
Less profits, 18 1-16 per cent	26,667 04	
	<u>120,970 67</u>	
		\$120,773 60
Goods saved.....		<u>13,581 33</u>
		\$107,192 27
Add freight, say 1 per cent.....		<u>1,071 92</u>
		\$108,264 19
Deduct		
7½ per cent. on ¼, say \$27,000, depreciation and discount.....	\$2,025 00	
5 per cent. on ¼, say \$27,000, credit purchases.....	<u>1,350 00</u>	
		\$3,375 00
Value of goods lost.....		\$104,889 19
Cost of saving goods.....		<u>180 00</u>
Loss in factory.....		39,574 92
(a) Appreciation of goods.....		<u>5,892 00</u>
Insurance, \$113,500 on (1).	(1). Merchandise loss..	\$150,536 11
Insurance, 35,000 on (1) and (2). (2). Tools	" ..	<u>693 93</u>
		Loss on merchandise and tools.....151,230 06
Insurance, \$2,500. Loss on furniture and fixtures.....		<u>1,500 00</u>

(a) This item is entered here because there is nothing to indicate whether it belonged in stock or factory. If the former, it should be added to the \$104,889.19, as "value of goods lost."

R. H. LAWRENCE, *Adjuster.*

\$13,401 33

\$147,132 14

693 95

1,500 00

\$149,326 09

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## STATEMENT VII.

**2186.** The following is an actual adjustment of a claim arising from the great Chicago fire, October, 1871. It is subject to the same remarks as the preceding adjustment.

Inventory Jan. 1, 1871, at net cash valuation,		\$388,686 00
Purchases to date of fire, reduced to 30 days, cash valuation .....	\$2,690,056 00	
Ditto on memorandum .....	4,709 00	
		<hr/> \$2,694,765 00
Less time discount on \$69,092.00		
goods in packages .....	\$2,926 58	
Ditto 1 per cent. on balance of purchases, to reduce to 10 days'		
cash prices .....	26,256 73	29,183 31
		<hr/> \$2,665,581 69
Foreign account, duties, premium on gold, and freights not included in merchandise account .....		70,612 00
Domestic freight account—goods in packages		791 96
“ “ “ balance of pur- chases .....		35,843 04
		<hr/> 2,772,828 69
		<hr/> \$3,161,514 69
Sales .....	\$2,832,875 00	
Less profits, 13 per cent .....	325,906 00	
		<hr/> 2,506,969 00
Total loss .....		<hr/> \$654,545 69
Goods in packages .....	\$69,092 00	
Less discounts .....	2,916 58	
	<hr/> \$66,175 42	
Add freights .....	791 96	
	<hr/> \$66,967 38	
Stock in Nos. 19 and 21 .....		156,610 00
“ “ 15 and 17 .....		430,968 31
		<hr/> \$654,545 69

The points worthy of note in this adjustment are :—

- 1st. The reduction of the property to a *cash basis*.
- 2d. Charges for freight, duties, premium, etc., upon the stock
- 3d. The deductions for discounts, etc., on purchases.

## STATEMENT VIII.

## SPECIFIC INSURANCE.

**2187.** This statement presents some peculiar features in consequence of the manner in which the accounts were kept between the *Lantern Factory* and the general store where the lanterns were sold, which necessitated some considerable labor and knowledge of book-keeping to arrange them correctly, so as to exhibit the liability of the insurers upon each class of accounts. The author is under obligation to H. K. LINDSEY, Esq., of Cincinnati, one of the adjusters, for a copy of this adjustment.

## STATEMENT OF

CRRERAR, ADAMS & Co.'s Loss by fire, Chicago, October 9, 1871.

(By permission.)

Merchandise as per inventory,		
June 30, 1871 .....		\$58,079 93
Purchases since July 1st .....	\$286,464 30	
Less sales from Lantern Factory,		
debited in general merchandise \$35,886 21		
Less invoices not received in store 15,158 39		
" returned goods and discounts 5,934 73		
" freight charged twice .....	395 33	
	<u>57,374 66</u>	
Total purchases in ledger .....		229,089 64
City bills not entered .....		3,223 23
Merchandise purchased of C. S. Munn & Co. ....		4,753 61
		<u>\$295,146 41</u>
Add <i>Lantern Factory</i> inventory,		
30th June, 1871 .....	\$24,370 27	
Purchases, merchandise, and la-		
bor in factory .....	\$30,815 87	
Less discounts and sundry ex-		
penses .....	2,780 34	
	<u>28,036 53</u>	
Total debits <i>Lantern Factory</i> .....		52,405 80
Total merchandise debits .....		<u>\$347,552 21</u>

ZZ

## CONTRA.

Sales general merchandise.....	\$307,206 73	
Less amount to Lantern Factory	\$13,216 55	
" returned goods and allow- ances.....	<u>1,599 41</u>	14,815 96
Total sales general merchan- dise.....		\$292,390 77
Less 11.522 per cent. profit.....		<u>30,208 63</u>
Cost value of general merchandise sold.....		\$262,182 14
Sales from Lantern Factory in debit of general merchandise..	\$35,886 21	
Less 22 per cent. profit.....	<u>6,471 29</u>	
Cost value of Lantern stock sold.		<u>29,414 92</u>
Total sales.....		\$291,597 06
Merchandise on hand at time of fire.....		\$55,955 15
Add palace-car ornaments, trimmings, and samples, not in ledger.....		1,500 00
Engine, boiler, machinery, and tools (compromise amount) ..		<u>12,500 00</u>

## COMMISSION GOODS.

Thomas Turton & Son.....	\$8,737 02	
Morris, Tasker & Co.....	3,532 90	
Wm. Jessop & Sons.....	19,687 54	
New England Car Spring Co....	2,042 55	
C. H. Hussey & Co.....	<u>5,659 61</u>	
Total commission goods.....		39,659 62
		<u>\$109,614 77</u>
Deduct merchandise saved, as per sales and appraisement.....		3,591 28
Net loss.....		<u>\$106,023 49</u>
Total insurance.....	\$142,000.00.	
Per cent. of loss on policies, 74.6644 per cent.		

## STATEMENT IX.

UNDER THE "USUAL COMMISSION CLAUSE."

**2188.** Where a party holds "goods on consignment," and "goods his own," in same loss.

The loss under the "con-ignors' account" is first made up with a view to ascertain the liability of the insured to such consignors, so that no portion of such liability may be assessed to the insurers. This ascertained, the loss on account of the owner is ascertained:

Both accounts are kept distinct, as required by the conditions of the policy.

## CONSIGNEE'S ACCOUNT.

Merchandise per consignment stock book, January 1, 1871.....	\$50,809 99	
Merchandise received to date of fire.....	224,586 46	
		\$275,396 45
Deduct sales on account consignors.....	\$154,959 70	
Less commissions and charges.....	7,747 98	
		147,211 72
		\$128,184 73
Add freight, at one per cent.....		1,281 84
		\$129,466 57
Deduct 10 per cent., to bring consignments on hand to actual cash value.....		12,946 65
Total loss, consignee's account.....		\$116,519 92

## OWNER'S ACCOUNT.

Merchandise purchased to January 1, 1871.....	\$1,986 13	
" " since.....	73,128 87	
		\$75,115 00
Total sales per merchandise account.....	\$221,610 23	
Less sales acc't. consignee (as above). 147,211 72		
		\$74,298 51
Sales on merchandise account.....	9,691 11	
Less profit, 15 per cent.....		64,607 40
		\$10,507 60
Gross loss.....		612 30
Deduct merchandise saved.....		
		\$9,895 30
Net loss.....		98 96
Add freight, at one per cent.....		
		9,994 25
Total loss, merchandise and consignee account.....		\$126,514 17

## STATEMENT X.

## MANUFACTURING INTEREST.

**2189.** The following is a bona fide adjustment made where fourteen companies were interested.

The policies of six companies read as follows, viz. :—

“ On boots and shoes, manufactured and in process of manufacture, and stock and materials for the manufacture thereof, contained in the *front* building of his three-story, etc.”

The policies of the other eight read concurrently, except the omission of the word *front*.

An addition had been built to the rear of the original building, and when completed the dividing wall had been removed, thus making the two into one, so that at the time of the fire there was no *front* room.

## STATEMENT RENDERED.

Inventory of stock, Dec, 18— .....	\$100,795 21
Invoices of purchases since to date of fire.....	263,685 64
Labor account, paid hands in that time.....	87,698 58
Total stock .....	<u>\$452,179 43</u>

## DEDUCTIONS.

Sales per merchandise account.....	\$393,763 98
Less, profits 10 per cent.....	39,376 39
Cost of goods sold.....	<u>\$354,387 59</u>
Value of salvage.....	28,586 35
Shrinkage on invoices.....	8,990 61
	<u>\$391,964 55</u>
Total loss claimed.....	\$60,214 88

## CONTRIBUTION.

**2190.** In making up the contribution for payment of the claim, those six companies, the policies of which contained the word *front*, were deemed specific, and the *eight* policies without the word *front* were deemed *general*. The *third* English rule, where specific and average policies are interested in the same loss, was applied. The *specific* policies, so termed, were

multiplied in their full amounts, and the *general* made a salvage, thus—

Six specific policies covering \$25,000, pay .....	\$25,000 00
Eight general " " 42,000, " .....	35,214 38
Total loss .....	\$60,214 38

In this connection it will be noted that an error of \$3,579.67 was made against the companies, in the estimate of profits, which, at ten per cent., would be \$35,796.72, instead of \$39,376.39.

**2191.** By this adjustment no injury was done to the insured, as he received the full amount of his loss, and something more; but the specific companies were made to pay more than their pro rata shares.

This injustice and the error in estimating the profits, which the insured declined to correct, came very nearly resulting in a law-suit; but it was finally compromised, leaving an ill-feeling among the parties.

What was meant by "shrinkage of invoices" is not clear, though probably the phrase is equivalent to "depreciation in values."

The adjusters in this case or a majority of them evidently, held "general" policies; hence the application of that particular rule. Had they held "specific" policies, the probabilities are that the ALBANY RULE would have been applied.

## COMPOUND POLICIES.

**2192.** As *compound policies* are simply *specific insurances* in the aggregate, the first step in the apportionment will be to determine the amount of *specific liability* of the policy upon each item under its protection, which, in all cases of general insurance, *will be in the exact ratio of the loss upon the several subjects*, within the amount of the policy. The result thus obtained will be the *pro rata proportions of the insurance*, in which the compound policy must contribute with co-insurers upon the respective items, as in ordinary specific insurance. (307.)

**2193.** As compound policies are liable for their full amount, or any ratable proportion thereof, upon any one of the items, *they must float with the loss* in such *ratable sums* as may be necessary to make good the indemnity on any item, should the *pro rata proportions* fail to accomplish this result.

From these propositions we get the following:—

## RULE.

**2194.** Compound policies become *specific*, and cover the several items under their protection in the exact proportions of the respective losses.

**2195.** This is the underlying principle of apportionment of ALL compound policies. Its comprehensiveness and universal applicability entitle it to be designated a GENERAL RULE, under the operation of which the *ratable proportions of insurance* upon each item under a compound policy can be correctly determined, subject only to the modifications rendered necessary in cases of exhausted policies (**2053**), when indemnity upon any one item may be incomplete. In such cases, in accord with the nature of compound insurance, a re-adjustment of the assessments may become requisite.

In the following *Statements* selections have been made to test the universality of this principle as a rule, embracing every variety of circumstances where compound insurance could be made; and the first instance is yet to be found where, properly applied, the proposition has failed to produce correct results.

## COMPOUND POLICIES.

## STATEMENT XI.

## CLASS I.—GENERAL CONCURRENCY.

## EXAMPLE 1.

<b>2196.</b> Company A covers merchandise.....	\$3,000
“ “ “ fixtures.....	2,000
“ B “ merchandise and fixtures.....	5,000
Loss merchandise \$4,000, fixtures \$1,500.	

Under the rule of compound policies, Company B becomes *specific at once* in the ratio of the loss upon the two subjects it covers, as \$4,000 on merchandise is to \$1,500 on fixtures, and contributes with Company A in these proportions, which are as 8 to 3. Hence, Company B covers merchandise in the sum of 8-11 of its amount, and fixtures in the remaining 3-11. This will give the following

## APPORTIONMENT OF INSURANCE.

Company.	Merchandise.	Fixtures.	Totals.
A.....	\$3,000 00	\$2,000 00	\$5,000
B.....	3,636 36	1,363 64	5,000
Insurance.....	\$6,636 36	\$3,363 64	\$10,000
To pay losses.....	\$4,000 00	\$1,500 00	\$5,500

From this apportionment of the insurance, the concurrency being general, we get by Rule VIII. (2152) the following

## CONTRIBUTION.

*First:* On merchandise :—

A, as \$6,636 36: \$4,000 :: \$3,000 00=	\$1,808 22
B, “ 6,636 36: 4,000 :: 3,636 36=	2,191 78

Total..... \$4,000 00

*Second:* On fixtures :—

A, as \$3,363 64: \$1,500 :: 2,000 00=	\$891 89
B, “ 3,363 64: 1,500 :: 1,363 64=	608 11

Total..... \$1,500 00

## RECAPITULATION.

Company.	Merchandise.	Fixtures.	Totals.	Salvage.
A. ....	\$1,808 22	\$891 89	\$2,700 11	\$2,299 89
B. ....	2,191 78	608 11	2,799 89	2,200 11
Total.....	\$4,000 00	\$1,500 00	\$5,500 00	\$4,500 00

The Rule of Proportion (VIII.) (**2160**) would give the same results, because the concurrency is general.

## EXAMPLE 2.

**2197.** Had the loss been as follows :—

On merchandise.....\$9,000  
On fixtures ..... 2,000

Company B would become specific in its full amount upon merchandise, the loss being total as to the insurance upon that item, and requiring all of the indemnity to meet it, and being total, contribution becomes inoperative. Each company paying its full insurance upon that subject; Company A would stand *solus* upon fixtures; and the Rule of Proportion (VIII.) would *not* work equitably.

## EXAMPLE 3.

**2198.** Had the loss been solely upon either fixtures, or merchandise, the policy of Company B would become specific in its full amount on such subject, and contribute with Company A, thus :—

Loss on merchandise only, \$5,000.

The contributive liability would be as follows :—

Company A \$3,000, and Company B. \$5,000. Total \$8,000.

To pay loss of \$5,000.

It will thus be seen that compound policies *float with the loss*, and are not always subject to the Rule of Proportion.

## STATEMENT XII.

## COMPOUND POLICIES, CLASS I.—GENERAL CONCURRENCY.

## "THE UNSOLVED PROBLEM."

## EXAMPLE 4.

**2199.** This case has for many years been familiar to fire underwriters in England, where it has been as much mooted among fire underwriters, as the famous *Jarndyce v. Jarndyce* case among the legal profession, and with about the same success, for it has received as many different solutions as there have been different attempts to solve it.

The example (reduced to federal currency for ease of calculation) is as follows :—

Office A on dwelling.....	\$100
Office B on warehouse.....	100
Office C on dwelling and warehouse.....	200
Total.....	\$400
Loss on dwelling.....	\$250
Loss on warehouse.....	100
Total.....	\$350

The results obtained by some of the more prominent underwriters in England are cited; the prominence given to the case is the apology for occupying so much space.

## EXAMPLE 5.

**2200.** The solution and argument of the late Mr. Banyon, who styled it "*a very difficult case*," are as follows :

"Now, if the assured claimed, in the first instance, for loss on the warehouse, which would be \$100, and the \$100 were divided in the proportions of two-thirds and one-third between offices B and C, he would have remaining \$133.33 insured by office C, and \$100 by office A, applicable to loss of \$250 on the dwelling-house, which would be insufficient to satisfy it. Hence he would have a right to have his larger policy applied to the large loss; and, claiming two-thirds of \$250, or \$166.67 of office C, and \$83.33 of office A, there would remain an insurance on the part of office C of \$33.34, and of office B of \$100, and the liabilities would be as follows :—

Office A on dwelling.....	\$83 33
Office B on warehouse.....	75 00
Office C on dwelling, \$166.67, and warehouse, \$25.....	191 67
Total loss.....	\$350 00

Salvage.

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Mr. Bunyon proceeds to apportion the contribution without first apportioning the insurance to ascertain the liability of each office, but he fails to adhere to any true proportions, for policy A is permitted to contribute with policy C in its whole amount of \$200 on dwelling, while policy B, with precisely the same claim upon policy C on warehouse, is compelled to contribute upon \$33.33 that is, the sum left over after policy A. has had *all* that it wanted. He then assesses arbitrarily the loss upon warehouse, upon policy B \$25 and C \$75, as the contributive proportions of those policies toward each other; but no explanation is given how those amounts were obtained. (2212a.) Thus policy C, \$200, actually contributed on \$275, in payment of the loss.

## EXAMPLE 6.

**2201.** The late Mr. Richter, of the Phoenix office, to whom the case was submitted, solved the problem under the pro rata rule, but, like Mr. Bunyon, he made no apportionment of the insurance as follows:—

	Dwelling.	Warehouse.	Total.
Office A.....	\$100 00	.....	\$100 00
Office B.....	.....	\$50 00	50 00
Office C.....	150 00	50 00	200 00
	<hr/>	<hr/>	<hr/>
Total.....	\$250 00	\$100 00	\$350 00

Here office B contributes with C in only \$50, while its amount was \$100, a guessing at conclusions.

## EXAMPLE 7.

**2202.** The late Mr. Hore gives the following solution, evidently based upon the ratio of loss, as far as he goes:

Office A pays on dwelling.....	\$100 00
" B " warehouse.....	64 00
" C " " .....	\$36 00
" C " dwelling.....	143 00
	<hr/>
The insured, deficiency.....	7 00
	<hr/>
Total payment.....	\$350 00

Thus compelling the insured to contribute to his own loss,

with unexhausted insurance under a specific policy, which is in direct conflict with his own rule.

## EXAMPLE 8.

**2203.** While this example is governed by the same principles as those controlling the preceding *Statement xi*, it presents an additional phase, arising out of the peculiar distribution of loss upon the several subjects, rendering a re-adjustment of the contributing insurance necessary to fully indemnify the insured. (**2056.**)

**2204.** Under the rule that insurance under compound policies becomes specific in the ratios of the loss upon the several items, Company C, in this instance, would become specific in the proportions of \$250 on dwelling and \$100 on warehouse, or as 5 is to 2, that is  $\frac{4}{5}$  of \$200 = \$142.86 on dwelling, and  $\frac{2}{5}$  of \$300 = \$57.14 on warehouse, and would contribute with its co-insurers in these sums respectively, which would give the following.

## FIRST APPORTIONMENT OF INSURANCE.

Company.	Dwelling.	Warehouse.	Total.
A.....Specific.....	\$100 00	.....	\$100 00
B.....".....	.....	\$100 00	100 00
C.....General.....	142 86	57 14	200 00
Total insurance .....	\$242 86	\$157 14	\$400 00
Loss.....	\$250 00	\$100 00	\$350 00

**2205.** From this apportionment the amount of insurance upon *dwelling* falls short just \$7.14 of full indemnity—evidently the same \$7 which Mr. Here, in his adjustment, assessed to the insured as “uncovered insurance”—while the insurance upon the warehouse showed an excess of \$57.14 over the loss, from which deducting the unexhausted insurance \$50, there will remain an excess of \$7.14 in C’s apportionment, which will be *float*ed over to C’s short contribution on dwelling, and then, while changing the apportionment from *pro rata* to *ratable*

proportions, without changing the aggregate amount, the insured will get full indemnity, presenting the following:

## SECOND APPORTIONMENT OF INSURANCE.

Company.	Dwelling.	Warehouse.	Total.
A.....	\$100 00	.....	\$100 00
B.....	.....	\$100 00	100 00
C.....	150 00	50 00	200 00
Total insurance.....	\$250 00	\$150 00	\$400 00
To pay loss.....	250 00	100 00	350 00

From which results the following:—

## FINAL CONTRIBUTION.

Company.	Dwelling.	Warehouse.	Total.	Salvage.
A.....	\$100 00	.....	\$100 00	.....
B.....	.....	\$66 67	66 67	\$33 33
C.....	150 00	33 33	183 33	16 67
Total payment.....	\$250 00	\$100 00	\$350 00	\$50 00

**2206.** Company A makes no salvage here because, with the full *pro rata* contribution of company C, its co-insurer, which was all A could call for from C as contributor, the total insurance upon *dwelling* was still short of indemnity, hence, there can be no salvage to A on this item. Company C makes its salvage on *warehouse*, where the insurance, even after C had contributed to the \$7.14 deficit on *dwelling*, was in excess of the loss, and B makes its salvage because the joint contribution of itself and C were in excess of the loss.

**2207.** This operation fully illustrates the difference between *pro rata* and *ratable* proportions as applied to contributive liability. Under the policy, C's *pro rata* of insurance was relatively \$57 and \$143, but its *ratable* proportions were \$50 and \$150 respectively; thus changing the respective amounts, but not increasing the aggregate. (2056.)

## STATEMENT XIII.

## COMPOUND POLICIES.—CLASS I.—GENERAL CONCURRENCY.

**2208.** A very apt and instructive illustration of this class and form is afforded by the example cited by Mr. HEALD in support of the ALBANY RULE (**2113**), and the equity of the two methods will be apparent.—The principle is precisely the same as *Statement xii* :

Home covers wheat .....	\$5,000	in warehouse No. 1.
Ætna " " .....	5,000	" " No. 2.
Market " " .....	5,000	" " Nos. 1 and 2.
Loss on wheat in warehouse No. 1, \$6,000 ; in No. 2, \$5,000.		

**2209.** The Market, covering in *both* localities, becomes specific in the proportions of the loss in each, that is, as \$6,000 in No. 1 is to \$5,000 in No. 2, which gives the insurance 6-11ths of \$5,000 in No. 1, and 5-11ths of \$5,000 in No. 2 ; and in these sums it contributes with its co-insurers, giving the following—

## EXAMPLE 1.

## APPORTIONMENT OF INSURANCES.

Companies.	Warehouse No. 1.	Warehouse No. 2.	Totals.
Home.....	\$5,000 00	.....	\$5,000
Ætna.....	.....	\$5,000 00	5,000
Market.....	2,727 27	2 272 73	5,000
Total insurance..	\$7,727 27	\$7,272 73	\$15,000
To pay loss.....	\$6,000 00	\$5,000 00	\$11,000

The aggregate and specific insurances in each warehouse being determined, the liability of each co-insuring company is ascertained, as in the previous examples :—

## WAREHOUSE NO. 1.

As \$7,727.27 : \$6,000 :: \$5,000.00 = \$3,882.35 Home  
 " 7,727.27 : 6,000 :: 2,272.73 = 2,117.65 Market.

## WAREHOUSE NO. 2.

As \$7,272.73 : \$5,000 :: \$5,000.00 = \$3,437.50 Ætna.  
 " 7,272.73 : 5,000 :: 2,727.73 = 1,562.50 Market.

These apportionments present the following—

## FINAL CONTRIBUTION.

Companies.	Warehouse No. 1.	Warehouse No. 2.	Totals.	Salvage.
Home.....	\$3,882 35	.....	\$3,882 35	\$1,117 65
Ætna.....	.....	\$3,437 50	3,437 50	1,562 50
Market.....	2,117 65	1,562 50	3,680 15	1, 19 85
Totals.....	\$6,000 00	\$5,000 00	\$11,000 00	\$4,000 00

**2210.** By the ALBANY RULE (**2120**), where this example is cited by Mr. Heald, in support of that method of apportionment, we find the following—

EXAMPLE 2.  
CONTRIBUTION.

Companies.	Warehouse No. 1.	Warehouse No. 2.	Totals.	Salvage.
Home.....	\$3,000	.....	\$3,000	\$2,000
Ætna.....	.....	\$2,500	2,500	2,500
Market.....	3,000	2,500	5,500	.....
Totals.....	\$6,000	\$5,000	\$11,000	\$4,500

The result is that the Market's *pro rata* is not a *pro rata* at all, as it is \$500 more than its policy, and it cannot be called upon to contribute more than its face. The Home and Ætna each making a heavy salvage, the Market being totally exhausted (**2117**), and the insured comes short \$500, with \$4,500 unexhausted insurance.

By the *pro rata* rule, the concurrency being general, and the loss partial only, the correct *pro rata* apportionment would be as given in Example 1.

## EXAMPLE 3.

<b>2211.</b> Company A, wheat.....	\$5,000	Loss wheat....	\$5,000
“ B, flour.....	1,000	“ flour.....	5,000
“ C, wheat and flour....	5,000	“ .....	.....
Totals.....	\$11,000		\$10,000

## FIRST APPORTIONMENT.

Company C is the compound insurance in this case, and covers *wheat* and *flour* in the proportions of the loss; that is, one-half or \$2,500 on each, and becomes specific in those

amounts respectively. This will give the specific insurance as follows:—

Companies.	Wheat.	Flour.	Totals.
Company A.....	\$5,000	.....	\$5,000
" B.....	.....	\$1,000	1,000
" C.....	2,500	2,500	5,000
Total insurance.....	\$7,500	\$3,500	\$11,000
Loss.....	5,000	5,000	10,000

From this apportionment there must be a re-adjustment of insurance upon *flour*, so that the insured can be fully indemnified, the deficiency under *pro rata* contribution being \$1,500. As Company C is the compound policy, floating with the loss—*without reference to pro rata proportions*—and as there is ample insurance upon wheat to enable it to do so, it must float in the requisite amount, from *wheat to flour*.

This will give the following

## SECOND APPORTIONMENT.

Companies.	Wheat.	Flour.	Totals.
Company A.....	\$5,000	.....	\$5,000
" B.....	.....	\$1,000	1,000
" C.....	1,600	4,000	5,600
Total insurance.....	\$6,000	\$5,000	\$11,000
Loss.....	5,000	5,000	10,000

From this second apportionment is obtained the following table of

## FINAL CONTRIBUTION.

Companies.	Wheat.	Flour.	Totals.	Salvage.
Company A.....	\$4,166 67	.....	\$4,166 67	\$833 33
" B.....	.....	\$1,000	1,000 00	.....
" C.....	833 33	4,000	4,833 33	166 67
Totals.....	\$5,000 00	\$5,000	\$10,000 00	\$1,000 00
Loss.....	5,000 00	5,000	10,000 00	.....

**2212.** By this apportionment it is evident that Companies A and C make a salvage, while Company B is exhausted by *pro rata* contribution as the *pro rata* insurance on *flour*—all that Company B had any interest in—was only \$3,500, while

the loss was \$5,000; thus, *exhausting* B's insurance and leaving a deficit of \$1,500, which, so far as B is concerned, would fall upon the insured had there been no floating insurance in reserve to afford indemnity. But Company C as a *float* comes to the rescue of the *insured*, and pays this \$1,500 *and no more*; for, having already contributed its *pro rata* proportion on *flour* with B— all that B could claim of it under the contribution clause—all further liability of C as to B ceases, C becoming liable only for any deficit on *flour* that might otherwise fall upon the insured.

EXAMPLE 3.—BY PRO RATA APPORTIONMENT, RULE VIII.

**2212a.** Many underwriters hold that Company B should have made a salvage in this case, as well as the other companies. They hold that as the insurance was \$11,000, and the loss \$10,000, each company should be liable only in 10-11 of its amount—the proportions of Company C being as in the following table, where the fallacy of such claims is clearly evident.

CONTRIBUTION.

Companies.	Wheat.	Flour.	Totals.	Salvage
Company A.....	\$4,545 45	.....	\$4,545 45	\$454 55
" B.....	.....	\$909 10	909 10	90 90
" C.....	454 55	4,090 90	4,545 45	454 55
Insurance.....	\$5,000 00	\$5,000 00	\$10,000 00	\$1,000 00
Loss.....	5,000 00	5,000 00	10,000 00	.....

By this apportionment both B and C gain in salvage, but at the expense of A, as compared with Example 3 above. While a specific policy, like A in this case, may be liable to the *insured* for any deficiency in *pro rata* contribution upon its subject, it is not liable to any *co-insuring company* for any amount beyond *pro rata* contribution. The *pro rata* liability of A, by the *first* apportionment, was only \$3,333.33; but its *ratable proportion* due to the insured was increased by the necessity of floater C transferring a portion of its contributive amount to meet the loss on *flour* in excess of *pro rata* contribution among the companies; but it still held its claim to contribution from floater C upon any balance remaining after such transfer, for the benefit of the *insured* only; and B cannot claim any interest in the contribution or salvages of A and C. (2212, 2244.)

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Totals.	Salvage
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909 10	90 90
4,545 45	454 55
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**2242, 2244.**)

## COMPOUND POLICIES.

### CLASS II.—PARTIAL CONCURRENCY.

**2213.** Embracing items not covered by any co-insuring policies, specific or compound.

The *underlying principle* is the same as in CLASS I., the policy becomes specific in the ratio of the loss on its several subjects. But in this CLASS the specific item (**307, 2071**) *must always be first provided for* in full accord with *all* legal decisions of our courts, and results in the following

#### RULE.

**2213a.** HELD, in Pennsylvania, Kentucky, Missouri, Maryland and New York; "*That a policy on two subjects is to be apportioned to the separate (specific) subject until the loss is paid; and the amount to be paid upon the joint (concurrent) subjects is divided between the policies in the proportions of the amounts of the separate (specific) policy on the joint subject, to the remainder of the policy (compound) on both subjects.*" (**2052, 2063, 2215, 2220, 2223.**)

**2213b.** Slight consideration of this decision will show it to be based upon the GENERAL RULE (**2193**) heretofore given, that compound policies are liable in the ratio of the loss. *In this CLASS the loss on the specific subject of the compound policy is always one of the ratable proportions.*

## STATEMENT XIV.

## CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE 1.

2214. Company A merchandise.....	\$5,000 00
"    B    "    and fixtures.....	5,000 00
Loss, merchandise.....	\$4,250 00
"    fixtures.....	1,500 00
	<hr/>
	\$5,750 00

## FIRST APPORTIONMENT.

*Fixtures.*

Company B covers fixtures, <i>solus</i> , and pays loss within its policy.	\$1,500 00
Leaving unexhausted insurance.....	\$3,500 00

## SECOND APPORTIONMENT.

*Merchandise.*

Companies A and B cover property to the amount of .....	\$8,500 00
(A \$5,000, and B, unexhausted, \$3,500), on which the loss was \$4,250, or 50 per cent. of the insurance.	
Company A covers \$5,000, at 50 per cent.....	\$2,500 00
"    B    "    3,500,    "    .....	1,750 00
	<hr/>
Total.....	\$4,250 00

## CONTRIBUTION.

Company B pays fixtures.....	\$1,500 00
"    merchandise.....	1,750 00
	<hr/>
	\$3,250 00
Company A pays merchandise.....	2,500 00
	<hr/>
Total loss.....	\$5,750 00

It will be noticed that Company B, covering a *specific* subject, becomes specific thereon at once in the amount of the loss (2070, 2157.)

*Form A.* 2 of this class comes under the same process, except in having *two specific items* to be first disposed of.

# STATEMENT XV.

803

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

### EXAMPLE 1.

**2215.** This is the oft-cited "CROMIE CASE" (reported 15 B. Monroe, Ky. R., 438), which has passed into a standard authority for policies of this class.

Company A covers Cromie's *old* paper-mill..... \$5,000  
An addition to the building was subsequently erected, and other insurance effected on *the whole* in Company B..... 7,000

Total insurance (old and new)..... \$12,000  
The loss as appraised—*old* building..... \$8,377 63  
new "..... 1,122 37  
Total loss..... \$9,500 00

**2216.** The first Company A, contended that the *total* insurance, \$12,000, on *both* buildings should first pay loss on the *old* building. (The Albany Rule.)

Under this claim, Company A, covering the *old mill* only, the apportionment would have been \$12,000 to pay \$8,377.63 loss; that is, 5-12 for Company A and 7-12 for Company B, covering both *old and new*; this would have given as the

### APPORTIONMENT.

Companies.	Old Mill.	New Mill.	Total.	Salvage.
Company A....	\$3,490 67	.....	\$3,490 67	\$1,509 33
" B....	4,886 96	\$1,122 37	6,009 33	990 67
Total.....	\$8,377 63	\$1,122 37	\$9,500 00	\$2,500 00

But MARSHALL, C. J., HELD:—

"The compound policy covering both *old and new* should *first* pay its *specific insurance* on the *new* building to the amount of the loss—\$1,122.37— which amount, *at least*, should be deducted from the policy before its aggregate amount could be brought into the calculation by which the proportional liability of each was to be ascertained."

The correct apportionment under this decision, which is the rule of this class of policies, would have been :—

## APPORTIONMENT.

Companies.	Old Mill.	New Mill.	Total.
A specific.....	\$5,000 00	.....	\$5,000 00
B general.....	5,877 63	\$1,122 37	7,000 00
Insurance.....	\$5,877 63	\$1,122 37	\$12,000 00
Loss.....	8,377 63	1,122 37	9,500 00

## CONTRIBUTION.

A : 10,877.63 : 8,377.63 :: 5,000.00 = 3,851.76 Company A.

" 10,877.63 : 8,377.63 :: 5,877.63 = 4,525.87 " B.

## FINAL CONTRIBUTION.

Companies.	Old Mill.	New Mill.	Total.	Salvage.
A.....	\$3,851 76	.....	\$3,851 76	\$1,148 24
B.....	4,525 87	\$1,122 37	5,648 24	1,351 76
Total....	\$8,377 63	\$1,122 37	\$9,500 00	\$2,500 00

It is evident that any other apportionment would have resulted in injustice to the general insurance B., by compelling contribution where it was not due, as the Albany Rule always does.

## STATEMENT XVI.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE 1.

**2217.** Where two or more compound policies protect each a specific item or items:

Company A on hats, caps, boots, shoes and <i>dry goods</i> ..	\$1,000.
Company B on hats, caps, boots, shoes, <i>furs</i> and <i>skins</i> ..	\$1,000
Loss hats, caps, boots, and shoes.....	\$1,200
Dry goods.....	300
Furs and skins.....	200
Total of loss.....	\$1,700

## FIRST APPORTIONMENT.

Will be of the several *specific subjects* covered by the respective policies.

Company A on <i>dry goods</i> , pays loss.....	\$300
“ B on <i>furs</i> and <i>skins</i> , pays loss	200

This will leave unexhausted insurance of each company: A \$700 and B \$800; total \$1,500, to apply to the payment of the joint or general loss on concurrent subjects.

## SECOND APPORTIONMENT.

Of the concurrent insurance:—

Companies A and B cover jointly to the amount of \$1,500 or property the loss on which is \$1,200, or 80 per cent.

## CONTRIBUTION.

Company A covers \$700, at 80 per cent., pays	\$560
“ B “ 800, “ “ “ “	540
Total joint payment.....	\$1,200

## RECAPITULATION.

Company A specific, \$300, general, \$560.	Total, \$860
“ B “ 200, “ 540.	“ 840
Total payment.....	\$1,700

which is the

Total.  
\$5,000 00  
7,000 00  

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12,000 00  
9,500 00

ny A.  
B.

Salvage.  
\$1,148 24  
1,351 76  

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\$2,500 00

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## STATEMENT XVII.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

## "FINN RULE" II.

**2218.** In an article, bearing date October 14, 1846, Mr. FINN supposes the following case, and proceeds to adjust it under his rule. The example is one of total loss complicated by double insurance under compound policies.

The case supposes the parties to be commission merchants, having in store merchandise owned by A, B, and C, who were instructed to insure and did insure. "On *wines, sugar and rice*, their own, or held in trust, or on commission, in the City Fire \$10,000; Bowery, \$10,000; total, \$20,000."

Also on *wines*, their own, or held in trust, or on commission in the Long Island, \$10,000; Jefferson, \$10,000; Croton, \$10,000; total, \$30,000; total insurance, \$50,000.

The merchandise in store at the time of the loss was, *wines* \$50,000; *sugars*, \$10,000; *rice*, \$15,000; total, \$75,000.

The loss was on *wines*, \$50,000, owned by A; *sugar*, \$7,500, owned by B; *rice*, \$2,500, owned by C; total loss, \$60,000.

Mr. Finn said: "Here we have a case calling for some principle of equitable adjustment affecting the interests of several parties, each in turn striving to have the largest possible sum applied to their (*sic*) particular loss. Equity, which is, or rather ought to be the foundation of all law, must hold the scales. Shall either of these gentlemen, A, B, or C, be entitled to have their (his) money to the exclusion of the others? Is there a single individual Ay! heard from any quarter? No! is the universal answer to this question."

**2219.** "*Wine* claims to have an interest in the *general* insurance, in proportion as the whole loss, \$60,000, bears to the whole general insurance, \$20,000. In effect, that five-sixths of \$20,000 insurance (pro rata of total insurance, \$50,000, and total loss, \$60,000) is applicable to his loss; that said policies covered *wine* as well as *rice* and *sugar*, and that as the precise amount intended to be insured on each description of property had not been fixed or specified in the policy, the immutable principles of justice must accord him the proportion of *insurance* that he claims."

"The amount insured by the general policy on *wines* being thus ascertained to be five-sixths of its whole amount or . . . . . \$16,666 67  
The amount insured by the Long Island, Jefferson, and Croton. . . 30,000 00

We find loss of \$50,000 has insurance only . . . . . \$46,666 67

**2220.** Mr. FINN carries his figures no further; but they are easily continued.

As the loss is total, the amount of *insurance*, as found by him, must be the amount of *contribution* to be made by the *general* policies, City Fire and Bowery upon *wines*—(he says)..... \$16,666 67  
This will leave for B and C on *sugar* and *rice*..... 3,333 33

Making total insurance.....\$20,000 00

**2221.** This amount, remaining from the general policies \$3,333.33, apportioned to City Fire and Bowery, upon the principle of the previous apportionments would give the *insurance* by each company as follows:—

Loss \$10,000, covered by insurance \$3,333 33, gives pro rata  $33\frac{1}{3}$  per cent. as the amount of each company's *insurance*, and the loss being total, the amount of *insurance* is the amount of *contribution*.

Then, \$7,500 loss on *sugars*, at  $33\frac{1}{3}$  per cent., insurance \$2,500 00  
2,500 " *rice* " " " 833 33  
Total loss \$10,000 Total insurance.... \$3,333 33  
The Bowery will pay on *sugars*.....\$1,250 00  
" " *rice*..... 416 67  
The City Fire " *sugars*..... 1,250 00  
" " *rice*..... 416 66  
\$3,333 33

The final result would be:—

Companies.	Wines.	Sugars.	Rice.	Totals.
Long Island, specific.....	\$10,000 00	.....	.. ...	\$10,000
Jefferson " .....	10,000 00	.....	.....	10,000
Croton " .....	10,000 00	.....	.....	10,000
City Fire, general.....	8,333 33	\$1,250	\$416 67	10,000
Bowery " .....	8,333 34	1,250	416 66	10,000
	\$46,666 67	\$2,500	\$833 33	\$50,000

This would give the following

#### FINAL CONTRIBUTION.

Companies.	A Wines.	B Sugars.	C Rice.	Totals.
Long Island, specific.....	\$10,000	.....	.....	\$10,000
Jefferson " .....	10,000	.....	.....	10,000
Croton " .....	10,000	.....	.....	10,000
City Fire, general.....	5,000	\$3,750	\$1,250	10,000
Bowery " .....	5,000	3,750	1,250	10,000
Totals.....	\$40,000	\$7,500	\$2,500	\$50,000

## STATEMENT XVIII.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

**2922.** This decision is known among fire underwriters as the "Missouri Case," (*Angelrodt & Barth v. Delaware Ins. Co.*, 21 Mo. 593.) The companies covered as follows:—

Company A (Delaware, defendant), merchandise "their own, or held in trust, or on commission, for account of whom it may concern".....	\$5,000
Company B (St. Louis Mut.) the same, with the addition of "merchandise held in storage".....	4,000
Total insurance.....	\$9,000
Loss, merchandise, "their own, etc.".....	\$7,470 75
" " "on storage".....	1,687 00
Total loss.....	9,157 75
Being in excess of the insurance.....	\$157 75

The contribution clause, upon the construction of which the suit arose, was as follows in the policy of Company A:—

"In all cases of plurality of insurance on the same subject this company shall be liable for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured bears to the whole amount insured thereon."

The company defendant paid the insured \$4,150.42 (under the Albany Rule), and this suit was brought to recover \$849.58, the difference between the amount paid and the sum of the insurance, the loss being in excess of all of the insurance thereon.

The insured claimed that Company B. should first pay the loss upon "goods on storage," its specific item, and contribute in the remainder of its insurance with Company A. on the joint subject, merchandise, which would be \$7,313, to pay loss of \$7,470.75. Excess of loss \$157.75, as above.

The trial court—Court of Common Pleas of St. Louis—gave judgment against Company A for \$4,520.53 on a policy for \$5,000, leaving a salvage of \$479.47 on a loss \$157.75 in excess of *all* insurance !!

The case was carried to the Supreme Court on appeal, which Court, after consultation with some supposed to be experts in fire loss adjustments, ruled in effect as follows:—

••••• Ordinarily the plan adopted by the Court of Common Pleas would

be chosen as a convenient one, but that plan is not necessarily the only correct one, and in this instance it fails to do full justice, and we therefore think it better so to apportion the amount to be paid by the St. Louis Mutual Company (B) as to apply it first to pay the loss on goods held on storage," by which means the whole amount insured by the defendants (A) becomes payable to the plaintiffs."

**2223.** This ruling was an attempt to apply the Rule of Compound Policies CLASS II. to cases of *total loss*, where no rule of apportionment could apply, for there was nothing to apportion, as the loss had, or should have absorbed all of the insurance.

But this is not all: there was a serious error in the attempted application of the principle of this CLASS II. Rule, which is that "where the general policy cannot make good its losses entirely upon its several subjects, it must pay an equal *pro rata* proportion upon each," whereas, under this ruling, the "goods on storage" would get payment *in full* at the expense of the other subject, merchandise, of \$94.32. The correct apportionment, as intended by the court ruling, would evidently be as follows:—

Loss on merchandise.....	\$7,470 75
Less Delaware Policy, A.....	5,000 00
Leaving St. Louis Co., B., share.	\$2,470 75
Plus "goods on storage.".....	1,687 00
Total liability of B....	\$4,157 75
B's insurance thereon...	4,000 00
Loss, excess of insurance..	\$157 75

Then: As 4,157.75 : 4,000 :: 2,470.75 : 2,376.43 loss on merchandise.  
 " 4,157.75 : 4,000 :: 1,687.00 : 1,623.57 " storage.

This gives the final contribution.	Mdse.	Storage.
Delaware Company, A.....	\$5,000 00	.....
St. Louis Co., B.....	2,376 43	1,623 57
Total insurance.....	7,376 43	1,623 57
To pay losses.....	7,470 75	1,687 00
Loss to insured.....	\$94 32	\$63 43

Co. B pays \$1,623.57 instead of \$1,687, as by the court ruling.

## STATEMENT XIX.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE 1.

**2224.** This example is complicated by *double* specific insurance, as follows—

Company A	on pork .....	\$5,000
" B	pork and flour .....	5,000
" C	pork and grain .....	5,000
" D	pork, flour, and grain .....	5,000

Total insurance .....

The loss is, pork, \$10,000; flour, \$3,000; grain, \$5,000;  
Total, \$18,000.

From this statement we get the following, as the

## MAXIMUM LIABILITIES.

Companies.	Pork.	Flour.	Grain.
Company A .....	\$5,000	.....	.....
" B .....	5,000	\$5,000	.....
" C .....	5,000	.....	\$5,000
" D .....	5,000	5,000	5,000
Insurance .....	\$20,000	\$10,000	\$10,000
To pay loss .....	10,000	3,000	5,000

**2225.** From which it is apparent that Companies B, C and D have compound policies with specific items, *flour* and *grain*, each covered by *double* insurance, which must be first paid before contribution with Company A on *pork*. Hence, policy D will contribute with B and C *in the ratios of the several losses upon their respective specific subjects*, which will give the following

## APPORTIONMENT OF INSURANCES.

Companies.	Pork.	Flour.	Grain.	Totals.
A specific .....	\$5,000	.....	.....	\$5,000
B general .....	3,500	\$1,500	.....	5,000
C " .....	2,500	.....	\$2,500	5,000
D " .....	1,000	1,500	2,500	5,000
Insurance .....	\$12,000	\$3,000	\$5,000	\$20,000
To pay loss .....	10,000	3,000	5,000	18,000

From this apportionment results the following

## FINAL CONTRIBUTION.

Companies.	Pork.	Flour.	Grain.	Totals.	Salvage.
A.....	\$4,166 67	....	....	\$4,166 67	\$333 33
B.....	2,916 67	\$1,500	....	4,416 67	583 33
C.....	2,083 33	....	\$2,500	4,583 33	416 67
D.....	833 33	1,500	2,500	4,833 33	166 67
Totals....	\$10,000 00	\$3,000	\$5,000	\$18,000 00	\$2,000 00

## EXAMPLE 2.

**2226.** Had the loss been respectively *pork* \$7,000, *flour* \$4,000, and *grain* \$7,000, the adjustment would be as follows:—

The table of *maximum liabilities* would be the same as in Example 1, except in the matter of losses, from which it is evident that policy D. *will be more than exhausted* in payment of the specific items under its protection, leaving nothing in which to contribute with co-insurers on *pork*. Hence, its liability must be confined to those items, in the ratio of four on *flour* to seven on *grain*, those being the proportions of the loss on those items—the co-insurers B and C making up the deficiency. This will give the following

## APPORTIONMENT OF INSURANCE.

Companies.	Pork.	Flour.	Grain.	Totals.
A.....	\$5,000 00	.....	.....	\$5,000
B.....	2,818 18	\$2,181 82	.....	5,000
C.....	1,181 82	.....	\$3,818 18	5,000
D.....	.....	1,818 18	3,181 82	5,000
Insurance..	\$9,000 00	\$4,000 00	\$7,000 00	\$20,000
Pay loss..	7,000 00	4,000 00	7,000 00	18,000

From this apportionment comes the following

## FINAL CONTRIBUTION.

Companies.	Pork.	Flour.	Grain.	Totals.	Salvage.
A.....	\$3,888 88	.....	.....	\$3,888 88	\$1,111 12
B.....	2,191 93	\$2,181 82	.....	4,373 75	626 25
C.....	919 19	.....	\$3,818 18	4,737 37	262 63
D.....	.....	1,818 18	3,181 82	5,000 00	.....
Totals.....	\$7,000 00	\$4,000 00	\$7,000 00	\$18,000 00	\$2,000 00

As Company D cannot contribute its full *ratable* proportion, on either *flour* or *grain*, it has no salvage.

## EXAMPLE 3.

**2227.** Had the losses been as follows :—

On *pork* \$3,000, *flour* \$5,000, and *grain* \$10,000, the adjustment would proceed as in Example 2, except that policy D would be exhausted upon grain alone, and present the following apportionment,—Company A. being the only one to make a salvage, the other losses being total, and absorbing all of the insurance on their respective items :

## APPORTIONMENT OF INSURANCE.

Companies.	Pork.	Flour.	Grain.	Totals.
A.....	\$5,000	....	....	\$5,000
B.....	....	\$5,000	....	5,000
C.....	....	....	\$5,000	5,000
D.....	....	....	5,000	5,000
Insurance..	\$5,000	\$5,000	\$10,000	\$20,000
Pay loss...	3,000	5,000	10,000	18,000

Policies B, C and D, as floaters, *float with their respective losses* where they may be needed to make the indemnity complete ; hence policy A can have no claim upon them for contribution until their specific losses shall have been paid in full, within their respective amounts, for nothing remains, in this example, upon which to contribute.

## STATEMENT XX.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE.

**2228.** This example is still further complicated by double *compound* insurance, entailing the necessity of two apportionments—the second under the rule of compound policies, CLASS I., the remaining insurances being concurrent :—

Company A, flour and lard.....	\$5,000
“ B, flour and grain.....	5,000
“ C, pork and grain.....	5,000
Total insurance.....	\$15,000
Losses, flour.....	\$3,500
“ pork.....	2,000
Grain.....	\$5,000
Lard.....	3,000
Total loss.....	\$13,500

## FIRST APPORTIONMENT OF INSURANCE.

*Partial Concurrence.*

Policy A covers *lard*, with no co-insurer, on which the loss was \$3,000 and pays that amount, leaving unexhausted *insurance* \$2,000, to apply concurrently on *flour* with its co-insurer B.

Policy C covers *pork* with no co-insurer, on which the loss is \$2,000; and pays that amount, leaving unexhausted *insurance* \$2,000, to apply concurrently on *grain* with its co-insurer B.

**2229.** The specific liabilities of the general policies A and C, on *lard* and *pork*, respectively, having being paid, leave the insurance upon *grain* and *flour* as follows :—

Company A, flour.....	\$2,000	Loss.....	\$3,500
“ C, grain.....	3,000	“ .....	5,000
“ B, flour and grain.....	5,000	“ .....	8,500

In this form the statement falls under the rule of CLASS I., *the concurrency being general*, and the apportionment is made accordingly. (**2196.**)

B, the general policy, will cover *flour* and *grain* in the proportions of the loss: as 3,500 is to 5,000, or as 7 is to 10; that is, 7-17ths of 5,000, or \$2,058.82 on *flour*, and 10-17ths of 5,000, or \$2941.18 on *grain*.

This gives the following

SECOND APPORTIONMENT OF INSURANCE.

*General Concurrency.*

Companies.	Flour.	Grain.	Totals.
A .....	\$2,000 00	.....	\$2,000
B .....	2,058 82	\$2,941 18	5,000
C .....	.....	3 000 00	3,000
Insurance.....	\$4,058 82	\$5,941 18	\$10,000
To pay loss.....	3,500 00	5,000 00	8,500

From this apportionment results the following

FINAL CONTRIBUTION.

Companies.	Lard.	Pork.	Flour.	Grain.	Totals.	Salvage.
A .....	\$3,000	....	\$1,724 64	.....	4,724 64	275 36
B .....	....	....	1,775 36	2,475 08	4,250 44	749 56
C .....	....	\$2,000	.....	2,524 92	4,524 92	475 08
Totals..	\$3,000	\$2,000	\$3,500 00	\$5,000 00	\$13,500 00	\$1,500 00

By varying the several amounts of loss in this example, as in *Statement xix.* (Examples 2 and 3), a number of interesting problems can be made up, all of which will be found subject to this rule.

## STATEMENT XXI.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

**2230.** The following synopsis of an actual adjustment of *mixed* compound and specific policies presents several peculiarities that may warrant its insertion somewhat at length.

The policies were :

Company A	(local), on books, stationery, fancy goods, and other articles usually kept in such stock . . . . .	\$10,000
	(No notice of other insurance given.)	
"	B (local), on books, stationery, paper, and pictures . . . . .	5,000
	And on fixtures . . . . .	500
	(Other insurance noted.)	
"	C (English agency), on books and stationery . . . . .	5,000
	(Other insurance noted.)	
"	D (New York agency), on school-books . . . . .	5,000
	(No notice of other insurance.)	
Total insurance		\$25,500

The loss was total ; but the amount was agreed upon at \$16,000 —“ *in a lump*,” showing heavy over-insurances.

The officers of the local companies and agents of the others agreed upon a division of the loss, *pro rata*—\$25,000 to pay \$16,000. Company A, waiving forfeiture for want of notice of other insurance, paid *pro rata* with the others, Company B paying \$500 on fixtures.

**2231.** A few days subsequently, the adjuster of Company D arrived upon the ground, and of course objected to this apportionment, as to his company, claiming that if his company was liable at all, it was for its *pro rata* share only of the loss upon school-books—value ascertained to be \$8,000 ; that as all the other policies covered “books,” and as “books” included “school-books,” they were all liable to contribute with his Company, D, on those “school-books”—which would be \$25,000 to pay \$8,000 ; or just half of the prior apportionment.

**2232.** But the officers of the local companies holding D to be a “specific” policy, and liable as such for its full amount on

CE.

Totals.  
\$2,000  
5,000  
3,000  
\$10,000  
8,500

Totals.	Salvage.
,724 64	275 36
,250 44	749 56
,524 92	475 08
5,500 00	\$1,500 00

example, as in  
r of interesting  
ould subject to

school-books, it ought to be satisfied with being let off with \$3,200, as assessed, instead of \$5,000, as it was liable to pay, and refused to re-open the adjustment.

Company D's adjuster finally compromised with the claimant, waiving the forfeiture, and paying some \$1,735.

**2233.** By ascertaining the loss upon *each item* of the insurance, the problem becomes interesting, and elucidates one of the vexed questions of apportionment of compound and specific policies upon the same loss.

The solutions of the several problems, under the general principles of *ratable proportion upon non-concurrent liability*, will be as follows:—

#### EXAMPLE 1.

**2234.** Under the "lumping" arrangement, making the loss \$16,000, exclusive of fixtures, which were specifically insured, and holding loss on "school-books" at \$8,000, the adjustment should have been \$20,000 insurance to pay the loss on the "miscellaneous" articles, including books *other than school-books* say \$8,000.

The apportionment would be:—

Insurance.	Miscels	Insurance.	School Books.
A, \$10,000, at 40 per cent.....	\$4,000	A, balance, say .....	\$6,000
B, 5,000, " .....	2,000	B, " .....	3,000
C, 5,000, " .....	2,000	C, " .....	3,000
		D, original sum .....	5,000
\$20,000 pays .....	\$8,000	Total .....	\$17,000

To pay loss of \$8,000, which gives the following

#### CONTRIBUTION.

A, \$6,000, pays 6-17 .....	\$2,823 53
B, 3,000, " 3-17 .....	1,411 76
C, 3,000, " 3-17 .....	1,411 77
D, 5,000, " 5-17 .....	2,352 94
<hr/>	
\$17,000	\$8,000 00

## FINAL CONTRIBUTION.

Companies.	School-books.	Miscellaneous.	Fixtures.	Totals.
A.....	\$2,823 53	\$4,000 00	....	\$6,823 53
B.....	1,411 76	2,000 00	\$500	3,911 76
C.....	1,411 77	2,000 00	....	3,411 77
D.....	2,352 94	.....	....	2,352 94
Totals.....	\$8,000 00	\$8,000 00	\$500	\$16,500 00

**2235.** The exemplification of the correct apportionment under this proposition will be made in tabulated form; all of the policies being compound and float with their respective losses.

TABLE 1. Represents the *maximum* limit or liability of each policy upon any *one* item, to be subsequently modified and controlled by the relative concurrency of the policies, as upon such concurrency will depend the proper apportionment, and the order in which the adjustment is to be made. (1621.)

## I.—MAXIMUM LIABILITIES.

Cos.	School-books.	Other Books.	Stationery.	Pictures, etc.	Fancy Goods.	Fixtures.
A.....	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	....
B.....	5,000	5,000	5,000	5,000	.....	\$500
C.....	5,000	5,000	5,000	.....	.....	....
D.....	5,000	.....	.....	.....	.....	....
Totals..	\$25,000	\$20,000	\$20,000	\$15,000	\$10,000	\$500
Loss....	\$8,000	\$2,000	\$3,500	\$500	\$2,000	\$750

**2236.** From this table it is evident that the concurrency of the several policies is *partial* only, which brings the apportionment under the rule of CLASS II., where the specific items of the floating insurances are first to be paid before contribution can be claimed by co-insurers upon other subjects, and then only in any remainders. (2213a.)

The apportionment will present some striking peculiarities, which illustrate this Rule. We note as follows:—

Company A, as to Company B, has <i>one</i> specific subject.	
" " " " C, " <i>two</i> " subjects.	
" " " " D, " <i>four</i> " "	
" B, " " C, " <i>one</i> " "	
" " " " D, " <i>three</i> " "	
" C, " " D, " <i>two</i> " "	

B33

All of which must be *first paid, in the order of subjects named*, by the respective companies before contribution can be claimed by others. Thus, A must *first* pay loss on "fancy goods," \$2,000. Then A in its balance (\$8,000) with B (\$5,000), as co-insurer, must pay for "pictures, etc." Then A and B, in their respective balances, must contribute *pro rata* with C on its *two* items, "stationery" and "other books;" and finally A, B, and C, in their respective balances, will contribute *pro rata* with D upon "school-books."

## APPORTIONMENT OF LIABILITIES.

**2237.** This order of arrangement will give the following apportionments of the several insurances :—

## FIRST APPORTIONMENT.

Company A covers *fancy goods, solus*.....\$2,000  
Leaving \$8,000 unexhausted insurance.

## SECOND APPORTIONMENT.

Company A covers *pictures, etc.* (balance).....\$8,000  
" B " " " ..... 5,000  
-----  
Total.....\$13,000

On which the loss is \$500.

Company A's proportion is 8-13, or.....\$307 69  
Leaving unexhausted insurance, \$7,692.31.  
Company B's proportion is 5-13, or..... 192 31  
Leaving still unexhausted insurance, \$4,807.69.

## THIRD APPORTIONMENT.

Company A covers *other books and stationery* (balance)....\$7,692 31  
" B " " " " ..... 4,807 69  
" C " " " " ..... 5,000 00  
-----  
Total.....\$17,500 00

Upon which the loss is, respectively, \$2,000 on *other books* and \$3,500 on

stationery—total, \$5,500; giving the proportions of the several policies as 4-11 on other books and 7-11 on stationery, with the following results:—

Companies.	Other books.	Stationery.	Unexhausted.
A.....	\$379 12	\$1,538 46	\$5,274 73
B.....	549 45	961 54	3,293 74
C.....	571 43	1,000 00	3,428 57
Totals.....	\$2,000 00	\$3,500 00	\$11,997 04

These results give the basis of the

## FOURTH APPORTIONMENT.

Company A covers school-books (balance).....	\$5,274 73
" B " " " .....	3,293 74
" C " " " .....	3,428 57
" D " " " .....	5,000 00
Total insurance.....	\$16,997 04
On which the loss is.....	8,000 00

**2238.** From these figures the contributive liability—that is, insurance—upon each subject by each policy is as follows:—

## 2.—MINIMUM LIABILITIES, OR INSURANCE.

Cos.	School-Books.	Other Books.	Stationery.	Pictures.	Fancy Goods.	Fixtures.
A.....	\$5,274 73	\$7,692 31	\$7,692 31	\$8,000 00	\$10,000 00	.....
B.....	3,293 74	4,807 69	4,807 69	5,000 00	.....	\$5,000 00
C.....	3,428 57	5,000 00	5,000 00	.....	.....	.....
D.....	5,000 00	.....	.....	.....	.....	.....
Total....	\$16,997 04	17,500 00	17,500 00	13,000 00	10,000 00	500 00
Loss....	\$8,000 00	\$2,000 00	\$3,500 00	\$500 00	\$2,000 00	\$750 00

In this table the insurance by companies A, B, and C upon the *two* subjects "other books" and "stationery" are made *pro rata*; the liability being joint or concurrent. The apportionment thus falls under the rule of CLASS I.; the contributive liability can be found either from their gross amounts, as in this example, or from the *pro rata* proportions (as 2,000 on "other books" is to 3,500 on "stationery") of each policy, the result will be the same as under the third apportionment above, where the ratio is found by the loss directly.

## CONTRIBUTION.

**2239.** As the *first*, *second* and *third* apportionments represent the contributive liabilities of the several policies, these amounts are therein determined. But the *fourth* apportionment represents the *insurance only*, upon *school-books*, and not the amounts to be *paid* by the respective companies. These amounts will be found by the Rule of Proportion (VIII, **2152**), as follows:—

Company A—	as	\$16,997 04 :	\$8,000 ::	\$5,274 73, :	\$2,482 63
“ B—	“	16,997 04 :	8,000 ::	3,293 74, :	1,550 24
“ C—	“	16,997 04 :	8,000 ::	3,428 57, :	1,613 70
“ D—	“	16,997 04 :	8,000 ::	5,000 00, :	2,353 43
Total.....		\$16,997 04		\$8,000 00	

As fixtures were insured specifically under policy B for \$500, the loss being \$750, it is paid by that company in full, the insured bearing the excess of loss.

The following formula represents in detail the

## FINAL CONTRIBUTION.

Cos.	School-books.	Other Books.	Stationery.	Pictures.	Fancy Goods.	Fixtures.	Totals.	Salvage.
A..	\$2482 63	\$879 12	\$1538 46	\$307 69	\$2000....		\$7207 90	\$2792 10
B..	1550 24	549 45	961 54	192 31	....	\$500	3753 54	1746 46
C..	1613 70	571 43	1000 00	.....	....	....	3185 13	1814 87
D..	2353 43	.....	.....	.....	....	....	2353 43	2646 57
	<u>\$8000 00</u>	<u>\$2000 00</u>	<u>\$3500 00</u>	<u>\$500 00</u>	<u>\$2000</u>	<u>\$500</u>	<u>\$16,500 00</u>	<u>\$9000 00</u>
Loss	\$8000 00	\$2000 00	\$3500 00	\$500 00	\$2000	\$750	\$16,750 00	

**2240.** This example has been treated thus *in extenso* because it embraces the chief peculiarities to be met with in ordinary compound policies, where the concurrency is partial only. At the same time it illustrates the liability of such general insurance to be in the exact ratio of the loss upon the several items.

## STATEMENT XXII.

## COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE 1.

2241. Company A covers Jones & Brown on stock, \$5,000	
“ B “ Jones' interest in stock, 2,500	
Total insurance .....	\$7,500

Interest of the partners supposed to be equal.

Loss on stock, \$6,000.

## FIRST APPORTIONMENT.

*Brown's Interest.*

As the general policy A covers the interest of Jones concurrently with policy B, the specific item under the compound insurance A—and to be first paid—is the interest of Brown, which is one-half of the loss, \$3,000, and entitles him to one-half of the joint insurance, \$2,500, representing his share of the policy—not of the loss—thus leaving him a loser of \$500 in consequence of short insurance.

Brown's interest in the insurance then will be \$2,500, which will leave of A's policy an equal sum as Jones' share, to contribute with the specific policy B upon the interest of Jones in stock, which, like Brown's, is one-half of the loss, or \$3,000; but, unlike Brown, Jones has specific insurance more than enough to pay all of his loss, and leave a salvage to his companies.

The insurance by policy A will be: Brown's interest, \$2,500; Jones' interest, \$2,500.

## SECOND APPORTIONMENT.

*Jones' Interest.*

The unexhausted one-half of policy A, \$2,500, and the specific policy B, \$2,500, cover Jones' interest in the loss, \$3,000, and each pay one-half, or 50 per cent., that is \$1,500.

This will give the insurance by the respective companies as follows:—

## THIRD APPORTIONMENT.

*Jones' and Brown's Interests.*

Company.	Jones.	Brown.	Totals.
A .....	\$2,500	\$2,500	\$5,000
B .....	2,500	.....	2,500
Insurance .....	\$5,000	\$2,500	\$7,500
To pay loss .....	3,000	3,000	6,000

From this comes the following

FINAL CONTRIBUTION.

Company.	Jones.	Brown.	Totals.	Salvage.
A.....	\$1,500	\$2,500	\$4,000	\$1,000
B.....	1,500	.....	1,500	1,000
Totals.....	\$3,000	\$2,500	\$5,500	\$2,000
Loss.....	3,000	3,000	6,000	

**2242.** The insurance being \$7,500, and loss \$6,000, it would seem that a payment of \$5,500 only would not be full indemnity. A short study of the facts will show the equity of the adjustment. The deficiency, \$500, falls upon Brown's interest, which was covered by insurance only to the extent of \$2,500, while his share of the loss was \$3,000.

By the addition of a specific policy upon Jones' interest, policy A makes a salvage of \$1,000, where the claim would otherwise have been for a total loss under the policy. **(2213.)**

The policy of company A being upon the interest of both, Jones and Brown, and being equal partners, Brown cannot under any circumstances, claim more than his half of the policy without reference to his loss. **(2245.)**

## STATEMENT XXIII.

## COMPOUND POLICY, CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE 2.

**2243.** Brown insures in company A jointly for himself, White, Black, and Green, building..... \$80,000  
 He also insures in company B, on his own one-fourth interest, additional..... 20,000

Total insurance..... \$100,000  
 The interest of the four partners is equal, and the loss..... \$40,000

## FIRST APPORTIONMENT.

*Joint Interest.*

Policy A, covering the four interests, is the general insurance, and becomes specific at once in the proportion of the *joint interest* of White, Black, and Green—three-fourths—and the *specific interest* of Brown for the other fourth. This gives the insurance, as follows:

A on the three *joint interests*..... \$60,000  
 “ Brown's *specific interest*..... 20,000  
 Total ..... \$80,000

## SECOND APPORTIONMENT.

*Brown's Interest.*

Policy B covers the interest of Brown, with the others, to the amount of..... \$20,000  
 And has the specific insurance policy A to contribute with it..... 20,000

Total specific insurance..... \$40,000  
 From these two apportionments comes the

## THIRD APPORTIONMENT.

Company.	Joint interests.	Brown.	Totals.
A (3 interests).....	\$60,000	\$20,000	\$80,000
B (one interest).....	.....	20,000	20,000
Total insurance....	\$60,000	\$40,000	\$100,000
To pay loss.....	30,000	10,000	40,000

This will give the following

FINAL CONTRIBUTION.

Company.	Joint interests.	Brown.	Totals.	Salvage.
A.....	\$30,000	\$5,000	\$35,000	\$45,000
B.....	.....	5,000	5,000	15,000
Totals.....	\$30,000	\$10,000	40,000	\$60,000

Brown saves nothing by his specific insurance; but the general policy saves \$5,000.

EXAMPLE 3.

**2244.** Had the loss been \$100,000, under similar insurance, the specific subject to be first paid by policy A would have been the same as in Example 1, but to the total amount of those interests—three-fourths..... \$60,000

The remaining one-fourth..... \$20,000

And specific policy B..... 20,000

Total..... \$40,000

will pay Brown's one-fourth of loss, \$25,000, in the proportion of one-half each \$12,500 ..... \$25,000

Total payment..... \$85,000

Salvage..... 15,000

In this case Brown saves \$5,000, while general policy A saves \$7,500 in consequence of having a co-insurer.

**2245.** Here, as in Example 1, we have a payment of \$85,000 only on a loss of \$100,000, with \$100,000 insurance. This seeming discrepancy is explained upon the principle already stated. The deficiency falls upon the three parties, Black, White and Green, for want of sufficient insurance upon their joint interest; while the more provident Brown has double the amount of insurance of either of the other parties, he receives but \$5,000 more, because his interest was *over-insured*. The law forbids any insured to recover more than his loss (2213.)

## STATEMENT XXIV.

COMPOUND POLICIES, CLASS II.—PARTIAL CONCURRENCY.

## EXAMPLE 1.

- 2246.** Company A \$1,000. Jones on *building* and interest in stock.  
 " B \$1,000. Jones & Brown on stock.  
 " C \$1,000. Brown on his interest in stock.  
 " D \$1,000. Jones & Brown on stock and *fixtures*.

The interest of the partners is equal.

Loss building.....	\$700 00
Stock.....	1,800 00
Fixtures.....	125 00
Total.....	\$2,625 00

## FIRST APPORTIONMENT.

*Specific Items.*

Companies A and D have compound policies, with specific items, A *building*, Jones' interest, on which loss is \$700, and B *fixtures*, Jones & Brown's interest, loss \$125, half each—and pay accordingly, leaving A unexhausted \$300, and D \$875 to contribute with B and C on stock, as the *respective* interests may require.

## SECOND APPORTIONMENT.

*Jones' Interest—stock.*

Company A, balance.....	\$300 00, pays.....	\$210 99
" B, one-half.....	500 00, " .....	351 65
" D, one-half of balance..	437 50, " .....	337 36
Total insurance.....	\$1,237 50, (pays half of loss)....	\$900 00

## THIRD APPORTIONMENT.

*Brown's Interest—stock.*

Company B, remaining half.....	\$500 00, pays.....	\$232 26
" C, specific insurance....	1,000 00, " .....	464 51
" D, remaining half.....	437 50, " .....	203 23
Total insurance.....	\$1,937 50, (pays half of loss)....	\$900 00

By Rule VIII. pro rata payment of each policy gives the following

## FINAL CONTRIBUTION.

Companies.	BUILDING.	STOCK.		FIXTURES.		Totals.
	Jones.	Jones.	Brown.	Jones.	Brown.	
A.....	\$700 00	\$210 99	.....	.....	.....	\$910 99
B.....	.....	351 65	\$232 26	.....	.....	583 91
C.....	.....	.....	464 51	.....	.....	464 51
D.....	.....	337 36	203 23	\$62 50	\$62 50	665 59
Jones' totals....	\$700 00	\$900 00	.....	\$62 50	.....	\$2,625 00
Brown's totals..	.....	.....	\$900 00	.....	\$62 60	

## EXAMPLE 2.

**2246a.** Had the interest of the parties been unequal, say Jones *sixty* per cent. and Brown *forty* per cent., the operation would be as follows:—

The interest in the partnership being 6-10 and 4-10, the partners bear the loss in those proportions. Thus, Jones bears 6-10 of \$1,800, or \$1,080, and Brown 4-10 of \$1,800 or \$720 on *stock*, and share the *concurrent* insurance in the same proportion.

## RECAPITULATION.

Companies.	BUILDING.	STOCK.		FIXTURES.		Totals.
	Jones.	Jones.	Brown.	Jones.	Brown.	
A.....	\$700 00	\$227 37	.....	....	....	\$927 37
B.....	.....	454 74	\$164 57	....	....	619 31
C.....	.....	.....	411 43	....	....	411 43
D.....	.....	397 89	144 00	\$75	\$50	666 89
Jones.....	\$700 00	\$1,080 00	.....	\$75	.....	\$2625 00
Brown...	.....	.....	\$720 00	....	\$50	

Jones & Brown—stock, \$1,161.00; fixtures, \$125.00; total, \$1,286.20.

In this instance the interest of both partners was amply protected, they were indemnified accordingly. These examples can be made interesting by varying the sums of the losses on the various items, resulting in considerable complications in cases of total losses on some of the interests, and partial on others; for the adjustment of all which the preceding rules give ample instructions.

## STATEMENT XXV.

## COMPOUND AND SPECIFIC POLICIES.

## EXCESS INSURANCE.

**2247.** *Condition of insurance.*—"Not to be liable to contribution for loss thereon, until after all of the specific insurance shall have been exhausted." (328.)

Floating policies also contain a similar clause, and when operative, will be adjusted in the manner given below. When such floaters have the average clause, the value of the sound property must be known also.

## EXAMPLE 1.

Company A .....	covers specifically....	\$5,000 in store K,	value \$10,000
" B.....	" "	5,000 " L,	" 10,000
" C.....	" "	5,000 " M,	" 17,000
" D.....	" floater.....	10,000 in stores K,L,M,	" 37,000

Loss in store K, \$8,000; specific insurance (A) \$5,000; excess (D) \$3,000  
 " " M, 9,000; " " (C) 5,000; " (D) 4,000

## CONTRIBUTION.

The specific policies A and C would pay \$5,000 each, and the floater D would pay the excess, \$7,000.

**2248.** Had the loss in K and M been \$4,500 each, being within the specific insurance, policies A and C would pay the whole, and the floater D would escape scatheless.

Totals.  
 \$910 99  
 583 91  
 464 51  
 665 59  
 -----  
 \$2,625 00

equal, say  
 operation

partners bear  
 or \$1,080,  
 current insur-

Totals.  
 \$927 37  
 619 31  
 411 43  
 666 89  
 -----  
 \$2,625 00

\$1,286.20  
 amply pro-  
 amply can  
 ses on the  
 in cases of  
 others; for  
 give ample

## STATEMENT XXVI.

## FLOATING POLICY.

## EXCESS AND AVERAGE CLAUSES.

**2249.** *Condition of the policy.*—"It is at the same time agreed, that if any specific parcel of goods included in the terms of this policy, or such goods in any specified building or buildings, place or places within the limits of this insurance, shall, at the time of any fire, be insured in this or any other office, this policy shall not extend to cover the same, excepting only as far as relates to any EXCESS OF VALUE (*not loss*) beyond the amount of such specific insurance or insurances, which said *excess* is so declared to be under the protection of this policy, and *subject to average* as aforesaid."

## EXAMPLE 1.

The *floater* covered in several localities, subject to its terms as above (excess and average)..... \$76,000

In one of the localities, building A, under the protection of the *floater*, there was *specific* insurance..... 324,000

Total insurance here..... \$400,000

Value of property in building. \$386,026

Loss in building A..... 274,192

**2250.** In the apportionment of the contributive liability the *floater* must be considered "other insurance," covering only the excess of value over the specific insurance, subject to average, as follows:—

Value of the property in the building A..... \$386,026

Specific insurance thereon..... 324,000

Leaving as "excess of value"..... \$62,026

this sum being under the protection of the *floater*, when made specific, as other insurance with the *specific*, any loss upon which is to be paid "in the proportion that the amount of insurance bore to the whole amount of the property."

The contributive liability of the *floating* insurance will be found as follows:

"Excess value," over *specific* insurance..... \$62,026

Amount of *floating* insurance..... 76,000

Value of property in building A..... 386,026

Then as \$386,026 val. : \$76,000 ins. :: \$62,026 loss :  
\$12,211, in which amount the *floater* will contribute with the  
*specific*, presenting the following

## APPORTIONMENT OF INSURANCE.

Specific insurances.....	\$324,000
Floating " made specific.....	12,211
<hr/>	
Total insurance.....	\$336,211

To pay loss on building \$274,192, to which each will contribute in these proportions.

**2251.** This is an actual case, (*Fairchild v. Liverpool and London and Globe Ins. Co.*) decided by the New York Court of Appeals in 1880 (2 Ins. Law Journal 112) where the Court said :

"It was thus provided that if at the time of any fire there should be any specific insurance upon the merchandise, this policy should not cover the same, but should then attach to protect only that portion of the value of the same which was in excess of the specific insurance. In that event it was such excess of value alone which was intended to be insured, and in case of fire the whole loss was intended to be thrown upon the specific insurances unless it \* exceeded the amount of them, and then the excess alluded to fell upon the floating policy." \*\*\*\*\* "And that in this case, as the specific insurance exceeded the value of the goods destroyed, the loss did not reach the interest insured by the floating policy, and the defendant was not liable for any portion of the loss."

Here the Court made a new contract between the parties, and substituted "excess of loss," for "excess of value," as the last four lines of the opinion plainly indicate. The specific insurances *did* exceed the amount of the loss, but they *did not* reach the amount of value of the property by some \$76,000, for which the floater was made a co-insurer by the terms of the clause and to that extent reduced the indemnity of the insured.

\* Loss not more.

† Which excess, loss or value? the last paragraph of the citation answers this question.

## STATEMENT XXVII.

## THE AVERAGE OR CO-INSURANCE CLAUSE.

**2252.** If the *value* of the property at risk at the time of any loss shall be greater than the amount hereby insured thereon, the insured shall be considered co-insurer for such excess, and all losses shall be adjusted accordingly.

The average clause requires a valuation of the entire property under the protection of the policy at the time of the fire, and makes the policy liable only for such proportion of the loss as the "amount hereby insured" may relatively bear to the value at risk, the insured becoming *co-insurer* for any *excess of value* beyond the amount of such insurance, and bears any loss in the same proportion.

When the policy equals the value of the property at risk the clause becomes inoperative, and the policy becomes at once liable for its full share of any loss within the amount of its insurance.

## EXAMPLE 1.

**2253.** A single policy containing the clause :—

Value of property.....	\$10,000
Average policy.....	\$5,000
Insured as co-insurer, balance.....	5,000
Loss.....	\$5,000
	10,000

The average policy pays \$2,500, and the insured carries the remainder as co-insurer.

## EXAMPLE 2.

**2254.** Where the clause is inoperative :—

Insurance.....	\$10,000
Value of property.....	10,000
Loss.....	5,000

## APPORTIONMENT

As \$10,000, insurance, is to \$10,000, value, 100 per cent., so is the liability of the insurers upon the loss, \$5,000, or 100 per cent

## STATEMENT XXVIII.

## THE THREE-QUARTER CO-INSURANCE CLAUSE.

## SPECIFIC AND CO-INSURANCE POLICIES.

**2255.** A case of loss adjustment, under the three-quarter clause of the Canadian Fire Underwriters Association, which reads as follows:—

"It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that the insured shall maintain insurance, concurrent in form with this policy, on each and every item of the property hereby insured, to the extent of at least *seventy-five per cent.* of the actual cash value thereof; and that failing so to do, the insured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to *seventy-five per cent.* of the actual cash value of each and every item of the property hereby insured, and, in that capacity, shall bear his, her, or their proportion of any loss that may occur."

The factors in the adjustment were:—

Total value of property.....	\$29,400
Three-fourths of which is.....	22,050
Loss as found by appraisers.....	28,050
Insurance.....	18,000
Company A, specific.....	\$10,000
Company B, 3/4 clause.....	8,000

**2256.** Three-quarters of the value, \$22,050, the clause required to be covered by insurance, or the insured to be a co-insurer for any deficiency of that amount. As between the \$8,000, with the clause, and the \$22,050 required, the insured becomes co-insurer for \$14,050, the difference, for part of which deficiency he held the \$10,000 specific policy of Company A. As the loss was so far in excess of the amount of insurance required to be carried, the clause ceased to be operative, and policy B becomes liable for its full amount, leaving the insured co-insurer for the remainder, \$14,050, with policy A, \$10,000, to help him.

## FINAL CONTRIBUTION.

Company A specific.....	\$10,000
Company B, three-quarter clause.....	8,000
Insured as co-insurer.....	4,050
Three quarters insurance.....	\$22,050

Leaving the insured as *co-insurer* for the remainder of the loss

## STATEMENT XXIX.

## COMPOUND AND SPECIFIC POLICIES.

## SUBJECT TO AVERAGE.

**2257.** One specific policy without average, and one general or compound, subject to average.

The apportionment will be governed by the same rules as Example 1. (**2258.**)

## EXAMPLE 1.

Company A, \$10,000 in warehouse K, <i>specific</i> , Value	\$20,000 00
" B, \$10,000 in warehouses K and L, <i>average</i> ,	
Value in L.....	10,000 00
Loss in warehouse K \$20,000.	

## CONTRIBUTION.

*The loss being total as to the insurance*

Company A pays in full.....	10,000 00
Company B pays the proportion that \$10,000, amount of its policy, bears to \$30,000, the value of the property under its protection.....	3,333 33
Insured, co-insurer with B, bears the balance.....	6,666 67
Amount of loss.....	\$20,000 00

## EXAMPLE 2.

**2258.** Insurance and value same as Example 1, above.

Loss in warehouse K.....	\$15,000 00
" " L.....	5,000 00

## FIRST APPORTIONMENT.

Company B is the compound policy, Class II., covering two subjects, with loss on both: one, warehouse L, specifically, which must first pay, under the rule of its Class, before contributing with A, upon the concurrent subject, warehouse K. B will therefore pay the loss in L, \$5,000, subject to average, presenting the following

## CONTRIBUTION.

As \$10,000 value is to \$5000 insurance, so will be	
\$5,000 loss to B's liability.....	\$2,500 00
Insured as co-insurer.....	25 00 00

## SECOND APPORTIONMENT—JOINT INSURANCES.

The insurance in warehouse K will now be :

Company A, specific.....	\$10,000
“ B, average, as \$20,000 value is to \$5,000 insurance, so will be \$15,000 loss to B's liability.....	3,750
Insured as co-insurer with B.....	1,250
<hr/>	
Total insurance.....	\$15,000
To pay loss.....	\$15,000

As the loss is total, there is no contribution between the co-insurers, so that the apportionment, as above, becomes the several contributions in payment of loss, as follows :—

## FINAL CONTRIBUTION.

	Warehouse K.	Warehouse L.
Company A, specific.....	\$10,000	.....
“ B, average.....	3,750	\$2,500
Insured co-insurer with B.....	1,250	2,500
<hr/>		<hr/>
Insurance.....	\$15,000	\$5,000
To pay loss.....	15,000	5,000

## STATEMENT XXX.

## COMPOUND POLICIES, CLASS II.—MANUFACTURER'S RISK.

**2259.** Five policies covered upon a manufacturing establishment, as follows :—

Company A. Stock, tools, and pianos for repairs .....	\$3,000
" B. Same. ....	3,000
" C. Same. ....	2,000
" D. Stock, specifically .....	5,500
E. " " .....	4,000
" " Tools, specifically .....	500

Total insurance,.....\$18,000

Losses : Stock, \$8,412 ; tools, \$845 ; piano for repairs, \$120. Total \$9,377.

An examination of the insurances reveals the fact that all of the policies cover the same subjects, in whole or in part, except the "piano." Hence, the piano, being the disturbing element must be removed by being first paid for (\$120) by the companies covering thereon: A \$45, B \$45, and C \$30. This will leave those policies covering concurrently upon the two subjects, stock and tools: A \$2,955, B \$2,955, and C \$1,970 ; aggregate, \$7,880. Applying the rule of proportion (VIII.) with losses as the factor, we find what proportion of \$7,880 insurance applies to stock and what to tools, on which losses are respectively \$8,412 and \$845 ; total, \$9,257.

The rule of proportion gives the following formula :

## STOCK.

As \$9,257 (total loss) is to \$7,880 (total insurance), so will be \$8,412, loss on stock, to \$7,161, insurance thereon.

## TOOLS.

As \$9,257 (total loss) is to \$7,880 (total insurance), so will be \$845, loss on tools, to \$719, insurance thereon.

Then having ascertained the proportions of the aggregate insurance upon stock and tools respectively, the next step will be to distribute this aggregate insurance *pro rata* among the three companies, A, B and C, to which the same formula will be used, presenting the following results :



## STATEMENT XXXI.

## COMPOUND POLICY, CLASS II.—FARM PROPERTY LOSS.

**2260.** The following is the adjustment of a farm property loss of recent occurrence:

Company A covered specifically:	
Produce .....	\$650 00
Harness, vehicles and implements .....	350 00
Horses (limit \$50 each) .....	300 00
Total insurance .....	\$1,300 00
Company B covered generally:	
Hay and grain, implements and horses (limit, \$75 each) .....	\$600 00
Total insurance .....	\$1,900 00
The losses were:—	
Hay and grain .....	\$389 50
Straw .....	291 00
Implements .....	80 00
Harness .....	143 00
Vehicles .....	191 90
3 horses (\$200, \$120 and \$100) .....	420 00
Total loss .....	\$1,515 40

## CONTRIBUTION.

**2261.** Company A will first pay its own specific subjects, say harness and vehicles, loss \$334.90, and contribute with Company B on the joint subject, implements, loss \$80.00, so far as its balance will go; for being, as to A, a *specific* insurance, it cannot call upon its other subjects for contribution. Hence the deficiency on implements will be made up by the co-insurer B, which covers thereon under its *floating* policy. The deficiency falls upon implements because Company A could not otherwise pay in full on harness and vehicles, the insured being protected by the floater of B.

The insurance covering upon *produce* includes both *straw* and *hay* and *grain*. Company B covers only the latter, leaving company A *specific* on "*straw*," for which it will first pay, and in the remainder of the \$650 contribute with B on "*hay* and *grain*." B has no liability on "*straw*."

**2262.** The number of horses covered is not stated; but the amount to be paid on each that may be lost is restricted to \$50 in policy A and \$75 on each in policy B, thus converting the insurance liability of the one to \$150 and the other to \$225, total \$375, upon which the loss was \$420 for the three. This

will leave the insured *uncovered* upon the \$200 horse, on which A covers \$50 and B \$75, total \$125 only; deficiency, \$75.

The co-insurers cover the horses \$50 and \$75, equal to \$125 each, and pay pro rata as the joint insurances may bear to the respective losses, say \$200 No. 1, \$120 No. 2, and \$100 No. 3, the insured bearing the deficiency.

**2263.** Company B being a "*float*er," covering the subjects at risk in a single sum, is liable to make up any deficiency in Company A's contribution on joint subjects, as a rule; but in this case B's liability upon horses being limited to a given sum in the event of loss, it becomes specific thereon, and cannot be called upon to make good any deficiency in excess of that sum, as *horse* No. 1. Had there been no limitation the losses would have been paid in full pro rata.

After payment of the respective liabilities of the two companies there will be a salvage to each, say: to A on horses, under the limit, \$150, and in contribution \$12.00; and in contribution on produce \$150—while company B will make a general salvage of \$147.60, of which \$18 will be on horses. This will present the following

## APPORTIONMENT AND CONTRIBUTION.

COMPANIES	Harness and Vehicles. Loss \$334 90.		Implements. Loss \$80.		Straw. Loss \$291.		Hay and Grain. Loss \$389 50.	
	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.
A.....	\$334 90	\$284 90	\$15 10	\$15 10	\$291 00	\$291 00	\$389 00	\$209 00
Insures...	334 90		15 10		291 00		389 00	
Pays.....		334 90		15 10		291 00		389 00
Company B			64 90	64 90			310 10	180 10
Totals..	\$334 90	\$334 90	\$80 00	\$80 00	\$291 00	\$291 00	\$669 10	\$389 50

COMPANIES	Horse No. 1. Loss \$200.		Horse No. 2. Loss \$120.		Horse No. 3. Loss \$100.		Totals. Loss \$1,515 40.		Salvage.
	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.	Insured.	Paid.	
A.....	\$50 00	\$50 00	\$50 00	\$48 00	\$50 00	\$40 00	\$1,300 00	\$388 00	\$12 00
B.....	75 00	75 00	75 00	72 00	75 00	60 00	600 00	452 40	147 60
Insures...	125 00		125 00		125 00		1,900 00		
Pays.....		125 00		120 00		100 00		1,440 40	
Insured...		75 00						75 00	

## STATEMENT XXXII.

## THE AVERAGE CLAUSE.

## UNDER ENGLISH PRACTICE.

**2264.** In English practice, when an *average* policy is brought into direct contribution with specified or non-average insurance upon the same loss, unless the English Rule (**2167**) be applied, the average policy is first made specific by the following

## RULE.

**2265.** Multiply the sum of the loss by the amount of the policy, and divide the result by the total value of the property at risk.

**2266.** This rule is based upon the principle that *the property is fully insured*, the insured himself being held as a co-insurer for any excess of insurance over and above the amount of the average policy, and if the insured holds any specified insurance he must first look to that for indemnity to its full amount, before the average policy becomes liable to contribute, *unless it first be made specific* by the above-cited rule; and, when so made *specific* the amount thus found is its maximum liability in all direct contribution with *specified* or other policies, while these latter are held for their full amounts. (**2074.**)

**2267.** The effect of this practice is to relieve the insured of the responsibility assumed by becoming a co-insurer except with the average policy, and throwing the deficient insurance—caused by the operation of the average clause—upon the specific policies, if specific policies there be any.

No contribution is required from the insured except with companies A and B, with which he is a co-insurer, as shown in the following example:—

## EXAMPLE I.

<b>2268.</b> Company A, average ....	\$5,000	} Value \$20,000. Loss \$10,000.
“ B, “ ....	5,000	
“ C, specific ....	5,000	

PROCESS:  $10,000 \text{ loss} \times 5,000 \text{ ins.} \div 20,000 \text{ value} = \$2,500 \text{ A's share.}$   
 $10,000 \text{ “} \times 5,000 \text{ “} \div 20,000 \text{ “} = 2,500 \text{ B's share.}$

## CONTRIBUTION.

Company A, liability made specific .....	\$2,500
" B, " " .....	2,500
" C, " originally specific .....	5,000
Total insurance .....	\$10,000
To pay loss .....	\$10,000

**2269.** Some adjusters hold that a more correct apportionment would be as follows:—

## EXAMPLE 2.

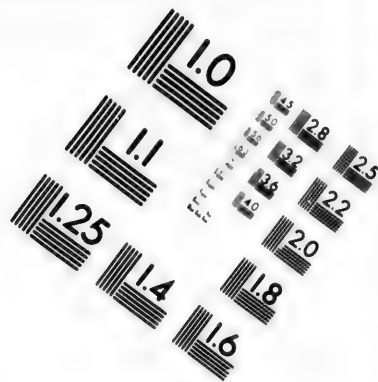
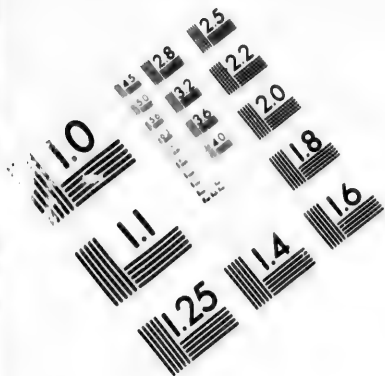
Company A made specific .....	\$2,500
" B " " .....	2,500
The insured—deficiency of A and B .....	5,000
Company B, specific insurance .....	5,000
Total insurance .....	\$15,000
To pay loss .....	\$10,000

They lose sight of the fact that the insured would, under such an apportionment, be called upon to contribute *twice*, as he has already contributed with companies A and B, under the average clause, and companies without the clause have no claim upon him as co-insurers.

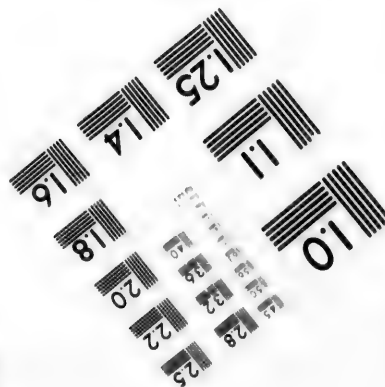
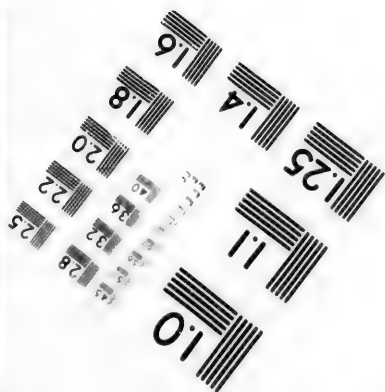
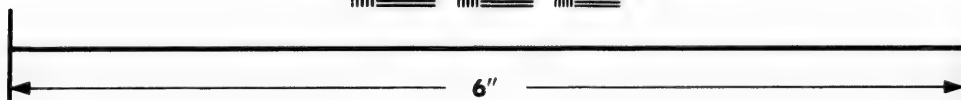
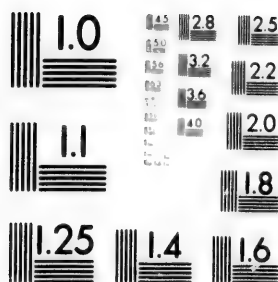
**2270.** Another injustice to the insured is claimed in that the *confining* ratios of insurance to the amount of the average policy only, he gets no benefit from any specific insurance he may have in addition. Thus, he may have insurance:—

Company A, under average .....	\$5,000	} Value, \$30,000.
" B, " " " .....	5,000	
" C, specific .....	10,000	

The liabilities of A and B are estimated as \$5,000 *is to* \$30,000 each, because the insured is co-insurer only for the excess of value of his property above the total *average* insurance thereon, and the clause in one policy cannot be extended to the benefit of policies not containing it.



# IMAGE EVALUATION TEST TARGET (MT-3)



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## STATEMENT XXXIII.

## PRO RATA DISTRIBUTION CLAUSE.

**2271.** Unlike the co-insurance clause, the amount of *insurance* upon the property does not enter into the pro rata calculation; the *value* of the property at risk and the *value* of the property lost will be required, and the clause is always operative. (358.)

## EXAMPLE 1.

**2272.** Ten thousand dollars on goods in packages and in process of bleaching, dyeing, napping, finishing, and when finished, contained in the buildings of the Lowell Bleachery, in Lowell, Mass., marked A, B, C and D, on diagram. To cover also goods held by them in trust or on consignment.

In case of loss, this insurance to contribute and pay in proportion as the value in each building bears to that in all.

Buildings A, B, C and D contain value \$25,000.

In building A .....	\$9,000
" B .....	7,000
" C .....	5,000
" D .....	4,000

Loss in building A, \$6,250.

" " C, 2,500.

## APPORTIONMENT.

**2273.** As the total value of property, \$25,000, is to the value of property in building A, \$9,000, so is the value of the loss, \$6,250.

This gives result in A ..... \$2,250

And as \$25,000 : \$9,000 :: \$2,500 result in C..... 500

Total payment..... \$2,750

To be paid pro rata by the several co-insurers

## STATEMENT XXXIV.

## DAMAGE BY REMOVAL.

**2274.** *Condition of the policy.*—"Nor for any loss or damage caused by removal of property from a building (not yet on fire) except it be proved that such removal was necessary to preserve the property; in which case the damage shall be borne by the assured and the company in the proportion as the sum hereby insured bears to the whole property insured."

**2275.** This condition is held to mean that damage occasioned by necessary removal of property in case of fire should be borne by the parties according to their respective interests or risks; the share of either bearing the same proportion to the whole damage that his interest in the property or risk bore to the whole value; and that the insured could recover only such proportion of the loss by such removal as the insurance bore to the whole property at risk at the time of the fire. (1680.)

## EXAMPLE.

Value of property .....	\$10,000
Insurance on same .....	7,000
Loss and damage by removal .....	800

## APPORTIONMENT.

As the value of the property, \$10,000, is to the insurance thereon \$7,000 so is the damage, \$800, to the liability of the underwriters.....

The insured as co-insurer..... 240 00

Total..... \$800 00

**2276.** It has been claimed that, under a decision (Wilson v. Peoria F. and M. Co., 5 Minn. 53) this condition of the policy applies to property removed from a building already on fire, where some portion of the property has been destroyed, and the remainder more or less damaged in removal. A case similar to the following was adduced in support of such claim.

## EXAMPLE 2.

Value of property .....	\$10,000
Insurance on the same .....	7,000
Actual loss by the fire .....	5,000
Leaves unexhausted insurance .....	2,000

In removing the salvage, \$5,000 in value, damage accrued thereto to the amount of \$500.

Under these circumstances, it was claimed that the liability of the company would be found as follows:—

As \$5,000, value of salvage, was to \$2,000, amount of insurance, so was \$500 damage, to the liability of the underwriters, which would give \$200 as the liability of the insurance, leaving the insured short \$300.

**2277.** There must be some mistake here, as any such ruling, under the circumstances set forth, would be in direct contravention of the express condition of the contract guaranteeing *full indemnity* against all loss or damage caused directly by fire, as the damage in removal would have been as above recited. Any failure of the insured so to remove the goods, so far as in his power, would have been at his own peril. This Minnesota decision has since been over-ruled.

The condition as to *removal* of property is contingent only upon the imminency of the danger, and the pro rata stipulation of the policy is intended only to prevent unnecessary loss and damage caused by hasty and ill-judged removals, by which the property may be injured and exposed to loss. (1680.)

## STATEMENT XXXV.

## "THREE-QUARTER LOSS CLAUSE."

**2278.** *Condition of the policy.*—"It is understood and agreed to be a condition of this insurance, that, in case of any loss or claim under this policy, this company is and shall be liable for only *three-fourths* of the same, not exceeding the sum herein insured; and that *one-fourth* shall be borne by the insured."

This is a simple pro rata apportionment, the insurers being liable for only *three-fourths* of the loss within the amount of the policy. (**387.**) The following examples will illustrate the working of the stipulation as between insurer and insured

## EXAMPLE 1.

**2279.** Company A covers stock to the amount of \$3,000, upon a valuation of \$4,000.

In case of a total loss, the company will pay the \$3,000, being three-fourths of the loss. The insured being *self* insurer for the balance, \$1,000.

## EXAMPLE 2.

**2280.** Company A insures \$3,000 upon a stock of \$4,000, as in Example 1, but saves property to the amount of \$1,000, the loss being \$3,000.

The company pays \$2,250, being three-fourths of the loss, \$3,000, and the insured bears the other one-fourth, \$750.

## EXAMPLE 3.

**2281.** Company A insures to the amount of \$2,500 on a stock of \$4,000, and saves from a subsequent fire goods to the value of \$1,500, loss being \$2,500.

The company pays three-fourths of the loss, or \$1,875; the insured losing the balance, \$625, which, with the \$1,500 saved and the \$1,875 received for the insurance, will make the worth of the property saved \$3,375 on a stock of \$4,000.

If there be more than one company interested, the loss is shared pro rata.

STATEMENT XXXVI.

**LIMITATION CLAUSE.**

"Loss not to exceed \$500 on any one animal."

**2282.** In the following example will be found a form of *limitation clause*, common in fire underwriting, but which has caused some confusion in apportionments where the bearing of the clause was not well understood.

EXAMPLE.

Company A covers live stock, generally....	\$1,500
" " B " " " "	1,667
" Being not to exceed \$500 on any one animal."	
Company C covers live stock, generally....	1,667
" No one animal to be valued at more than \$500."	
<b>Total insurance.....</b>	<b>\$4,834</b>

Loss, one bull, valued at \$2,000, and two steers, valued at \$168 each.  
Total \$2,336.

**2283.** The first question to be decided is the construction of the clause in policy C, "no one animal to be *valued at more than \$500*," as upon this will depend the apportionment. If it be a *valued* policy its liability will be \$1,500, that is \$500 each on one bull and two steers; for it cannot be "*valued*" as to the bull, and "*open*" as to the steers; nor will the amount of loss on either affect the valuation; if "*valued*" it must pay \$500 each on the steers, without reference to the amount of loss, for that is the bond. (282.) This will make company B and C concurrent.

**2284.** But it evidently is *not a valued policy*. The contingency provided for by the words "*more than \$500,*" shows that it was the intention of the parties to the contract simply to limit the *loss* on any one animal to \$500, and to pay that sum or *less*, if required. Upon this construction of the clause the adjustment will be now made.

Another point to be decided is the *effect* of the limitation clause, and how it shall be applied.

**2285.** As all *limitation* clauses are operative only when the contingency for which they provide shall arise, it is evident that

in this example this clause is operative in the case of the bull, in policies B and C, where the loss exceeds the limit, but not in the case of the steers where it is less. Hence company A, covering without limitation, becomes of the nature of a compound policy, *floating* with the loss to make the indemnity good to the insured when the limitation clause of the other policies fails to meet the loss. The example thus falls under the rule of COMPOUND POLICIES, CLASS I., all of the policies covering the same subjects but in different amounts. This will make the contribution of company A in the ratio of the respective losses: that is, as \$2,000 on bull is to \$336 on steers, which will give the following

## APPORTIONMENT OF INSURANCE.

	Bull.	Steers.	Totals.
Company A, unlimited....	\$1,284 24	\$215 76	\$1,500 00
" B, limited.....	500 00	1,167 00	1,667 00
" C, limited.....	500 00	1,167 00	1,667 00
Total.....	\$2,284 24	\$2,549 76	\$4,834 00

Then as \$2,284 24 : \$2,000 00 :: \$1,284 24 : \$1,124 44 Co. A. Bull.  
 2,284 24 : 2,000 00 :: 500 00 : 437 78 " B. "  
 2,284 24 : 2,000 00 :: 500 00 : 437 78 " C. "

And as \$2,549 76 : \$336 00 :: \$215 76 : \$28 44 Co. A. Steers.  
 2,549 76 : 336 00 :: 1,167 00 : 153 78 " B. "  
 2,549 76 : 336 00 :: 1,167 00 : 153 78 " C. "

## FINAL CONTRIBUTION.

	Bull.	Steers.	Totals.	Salvage.
Company A, unlimited..	\$1,124 44	\$28 44	\$1,152 88	\$ 347 12
" B, limited....	437 78	153 78	591 56	1,075 44
" C, limited....	437 78	153 78	591 56	1,075 44
Totals.....	\$2,000 00	\$336 00	\$2,336 00	\$2,498 00

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## STATEMENT XXXVII.

## ADJUSTMENT OF A LIQUOR LOSS.

**2286.** Among the various classes of losses falling under the care of adjusters, few cause more difficulty and require more thorough practical scrutiny than the settlement of a *liquor loss*. The facility with which liquors can be *run*, and the manipulations without number which the articles undergo in the various processes of compounding, and which it is almost impossible to detect, render it a matter of doubt, even after a careful adjustment, if the company is not paying at least double the actual value of the property lost.

**2287.** The following digest of the report of an adjustment of a suspicious liquor loss, made by R. H. LAWRENCE, Adjuster, contains many suggestive points, and will amply repay an attentive perusal. He says :—

I found that, for some time before the fire, and especially during the time embraced between the 26th of September, 1870, and the 19th of November (the day of the fire), the purchases had been composed almost exclusively of alcohol and spirits and very low priced whiskies, while the sales were at about the same average price per gallon as those previously made, showing that they were largely decreasing the stock of better liquors with which the cheaper articles were compounded.

I found that, on an average, the liquors sold were about 15 per cent. below proof—that is, contained 15 per cent. of water; that, practically, no pure liquors were sold, except in the shape of alcohol and spirits; and that the average proportion of ingredients composing the liquors disposed of were about 29½ per cent. of comparatively good liquors and 70½ per cent. of alcohol, spirits, or very cheap whiskies; in other words, a barrel of 40 gallons would be made up as follows: Water, 4 gallons; liquor (averaging say \$1.45), 10½ gallons, and alcohol, spirits, or cheap whiskies (averaging less than \$1.00), 25½ gallons. This would give \$1.12½ as the average value per gallon of the 36 gallons of proof liquor.

The purchases from the 26th of September to the 19th of November, of domestic liquors of the better class, as shown by the books of the firm, amounted to 2,005 74-100 gallons; of these there were on hand at the time of the fire, as shown by the schedule of the insured, 1,697 gallons. Of cheap liquors, the purchases amounted to 3,587 gallons, of which 794 gallons were on hand at the time of the fire. Of alcohol and spirits, the purchases amounted to 9,434 2-100 gallons, the sale to 1,210 gallons, and the remainder on hand at the time of the fire to 453 96-100 gallons. During the same time there had been returned 767 gallons of liquors which had been sold by the firm, and of these 70 gallons were still on hand, the remainder having been sold.

The sales during this period had been 13,843 25-100 gallons in all, of which 1,210 were of alcohol and spirits, leaving 12,633 25-100 of compound liquors, averaging 85 per cent., equal to 10,738 25-100 gallons at proof. Of this the equivalent of 590 gallons was composed of returned liquors, leaving net sales 10,148 25-100 gallons.

The quantities of alcohol and spirits (7,768 6-100 gallons), and of the cheap liquors (2,793 gallons), in all 10,561 6-100 gallons, not accounted for, must necessarily have been used in compounding, and would require for that purpose the addition of 4,419 16-100 gallons of the higher-priced liquors, making of these 14,980 22-100 gallons. Deduct from this the sales (10,148 25-100 gallons), and we find on hand at the time of the fire, 4,831 97-100 gallons of compounded liquors from this source, and 70 gallons of the same grade, which had been sold and returned, in all 4,901 97-100 gallons.

The "Spirit-Book," kept by order of the Government, showed on hand on the 19th November, 8,293 gallons. I have accounted for this as follows:—

Compounded liquors.....	4,901.97	gallons.
Better " .....	1,697	"
Cheap " .....	794	"
Alcohol and spirits .....	453.96	"
Total .....	7,846.93	"
Leaving .....	446.07	" not ascertained.

To make the balance of spirit-book.. 8,293 gallons.

In the preparation of schedule "A," accompanying the proofs of loss, I have treated this 446.07 gallons as high-priced whisky, worth \$2.75 per gallon, the books showing purchases of this class of goods at an earlier date than those above referred to. The other articles in stock at the time of the fire are shown to have been there by the books. The total amount of property on hand, covered by the policies, on the 19th November, 1870, was, therefore, \$16,386.59, of which was saved property to the amount of \$9,010.64, as above set forth, showing a loss of \$7,375.95.

The claim, as made, was for stock on hand November 19th, \$22,610.21, and for loss, \$12,728.51. Total insurance, \$22,000.

## STATEMENT XXXVIII.

## WOOLEN MILL.

**2288.** Resumé of an adjustment of damage upon the WILCOX WOOLEN MILL, at Meriden, Conn., occurring in April, 1870, made by the late E. E. MANTON, then President of Boston Manufacturers' Mutual, and others. Emanating from this source, it may be considered as authority so far as to what constitutes *machinery, tools, fixtures, supplies, furniture, etc.*, as connected with mill risks and losses.

Twenty-four companies were interested in the loss. The total insurance was \$370,000, and the damage was \$89,400, as follows—policies concurrent except one:—

	Insurance.	Damage.
On the three-story and attic main brick building.	\$95,000 00	\$190 00
On the shafting, belting, machines and machinery, gas, water, and steam pipes; tools, fixtures, supplies, tank, safes, mill and office furniture, contained therein.....	130,000 00	910 00
On the stock and material used, manufactured, unmanufactured, and in process contained therein.....	40,000 00	300 00
On the two-story brick dye-house, machine and repair room, picker-room, drying-room, yarn, wool, and sorting room (in rear of main mill)..	30,000 00	26,000 00
On the shafting, belting, machines, machinery, tools, supplies, fixtures, furniture, dye-tubs, gas, water and steam pipes, engines, boilers, pumps, and their connections contained therein	35,000 00	22,000 00
On the stock and material used, manufactured, unmanufactured, and in process contained therein.....	40,000 00	40,000 00
<b>Totals.....</b>	<b>\$370,000 00</b>	<b>\$89,400 00</b>

## APPRAISEMENT.

	Sound Value.	Damaged.
Main mill, damage.....		\$190 00
Machinery, etc., in main mill, damage.....		910 00
Stock and materials in main mill, damage.....		300 00
Rear buildings, dye-house, picker-room, etc., damage.....		26,000 00
Machinery, etc., in rear buildings, damage as follows, viz.:—		

## SHAFTING.

Including couplings, pulleys and hangers.....	582 60	582 60
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## BELTING.

Including main belt and counter-belt.....	\$1,689 40	\$1,064 40
1 side lace leather.....	3 00	3 00
		<b>\$1,167 40</b>

## 2280. MACHINES AND MACHINERY.

2 Dressers and reels.....	\$1,000 00	\$750 00
1 Beamer.....	35 00	20 00
2 Cold-air dryers.....	1,000 00	1,000 00
1 Hard end waste picker.....	460 00	445 00
1 Kellogg picker.....	175 00	160 00
1 Parkhurst burr-picker.....	1,125 00	1,000 00
1 Duster.....	100 00	90 00
1 Wool-washer.....	1,300 00	1,235 00
1 Wash-box, perforated copper bottom.....	150 00	150 00
1 Extractor.....	400 00	380 00
1 Large mill.....	5 00	5 00
1 Broad gig.....		
2 Wash-mills.....		
6 Felling-mills.....	2,050 00	250 00

Total.....

\$5,485 00

## 2280a. TOOLS AND FURNITURE.

3 Large horses with casters, \$5.....	\$15 00	\$15 00
3 " boxes.....	15 00	15 00
1 20-gal. oil-can.....	8 00	3 00
1 Pr. Fairbanks' scales.....	25 00	22 00
1 Pr. steelyards.....	5 00	3 00
Sundry tools in picker-room.....	25 00	25 00
2 Wool trucks.....	16 00	16 00
1 Pr. blocks, rope and windlass.....	65 00	65 00
1 Snatch-block.....	10 00	10 00
25 Boxes with casters, \$5.....	125 00	125 00
1 Doz. chairs.....	2 00	2 00
1 Clock.....	5 00	5 00
1 Doz. pr. shears.....	6 00	6 00
1 Desk.....	4 00	4 00
1 Stove and pipe.....	20 00	20 00
1 Pr. Fairbanks' scales.....	35 00	35 00
1 Large spray for cloth.....	8 00	8 00
7 Poles for poling wool, \$3.....	21 00	21 00
150 Yarn poles for wool, 25c.....	40 00	40 00
250 " " cotton, 15c.....	37 50	37 50
3 Large reels on tubs, \$15.....	45 00	45 00
1 Pr. Fairbanks' scales.....	30 00	30 00
1 Clock.....	5 00	5 00
50 Bleeding bags for dyeing, 25c.....	12 50	12 00
1 Desk.....	10 00	10 00
1 Cupboard.....	10 00	10 00
3 Hydrometers.....	3 00	3 00
2 Pr. scales.....	20 00	20 00
Sundry tools in dry-house.....	150 00	150 00
100 ft. 2 1/2 inch hose.....	125 00	125 00
200 ft. 1 1/2 " " 48c.....	96 00	96 00
4 Couplings, \$5.....	20 00	20 00
2 Large baskets with casters, \$8.....	16 00	16 00

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ce. Damage.  
0 00 \$190 00

0 00 910 00

0 00 300 00

0 00 26,000 00

0 00 22,000 00

0 00 40,000 00

0 00 \$89,400 00

Value. Damaged.  
\$190 00  
910 00  
300 00

26,000 00

2 60 582 60

9 40 \$1,064 40

3 00 3 00

\$1,167 40

**2200. SUPPLIES.**

Estimated value of supplies contained in dye-house and drug-room, consisting of soda-ash, borax, sal-soda, soap, bichromate, flavine, tartaric acid, oxalic acid, picric acid, cochineal, red prussiate, alcohol, camwood, alum, fuschine, cut fustic, madder, sumac, oil vitriol, ex. indigo, argols, ground log-wood, lac dye, salt, brimstone, quercitron bark, yellow prussiate potash, ammonia, barwood, muriatic acid, chrome mordant, feathered tin, ground hyperine, copperas, blue stone, cudbear, indigo, chloride lime, gallic acid, dahlia parme, blue de Lyon, sal ammoniac, ground nutgalls, ground alum, brown aniline, yellow aniline, chloride potash, tin crystals, sugar of lead, red liquor, stannate of soda, red sanders wood, nitric acid, catechu, carbonyl, black iron liquor. Value \$4,000.....

\$3,000 00    \$3,000 00

**2201. FIXTURES.**

1 Thompson's elevator.....	\$550 00	\$550 00
Benches and bins in sorting room.....	50 00	50 00
3 Glue-casks and attachment.....	15 00	15 00
6 Round tubs, \$25.....	150 00	150 00
4 " " large, \$150.....	600 00	600 00
6 Square " " \$75.....	450 00	450 00
1 Post with arms for skein-drying.....	20 00	20 00
1 Hanging perch with rolls.....	10 00	10 00
Gas, water, and steam pipes.....	10,850 00	6,000 00
2 Woodruff & Beach engines, 2 drop flue boilers, 4 tubular do., 1 large Worthington pump, 1 Guild & Garrison's do., 1 Earl do., pipes, valves, drums, gauges, indicators, cocks, regulators, and connections.....	29,500 00	3,000 00

\$10,845 00

**2202. STOCK AND MATERIAL IN THE REAR BUILDINGS.**

3,101 lbs. pulled wool, 45c.....	\$1,530 45	
36,510 " " " 45½c.....	12,062 05	
1,677 " " " 44½c.....	746 25	
3,461 " " " scoured, 67c.....	2,418 87	
6,850 " Fleece " " No 3, 85c.....	5,822 50	
2,200 " California wool, 38½c.....	847 00	
7,560 " XX fleece " sorted, 52c.....	3,931 20	
12,780 " Pick-lock wool, sorted & unsorted, 52c.....	6,645 60	
8,875 " Domestic fleece wool, No. 4 and 5, 52c.....	4,615 00	
1,100 " Combing " 55c.....	605 00	
2,750 " Seedy and frubs " 50c.....	1,375 00	
11,650 " Oregon " 35c.....	4,077 50	
500 " Yarn, \$1.25.....	625 00	
1,500 " Wool string, 3½c.....	52 50	
700 " Wool sacks, 60c.....	420 00	
600 " " 50c.....	300 00	
	\$16,073 93	\$40,000 00
Total damage.....		\$89,400 00

## 22403. I-IN-1. COUNTRY: INDIA.

UNIT VOTES BY MEMBERS		MAIN MILL.		BEAR BUILDINGS.		TOTAL.					
RECEIVING.		MAINTENANCE.		RECEIVING.		MAINTENANCE.					
INSURE.	PAY.	INSURE.	PAY.	INSURE.	PAY.	INSURE.	PAY.				
1	12.074	25.95	1.144	120.92	5.770	2.014	4.424	6.476	61.000	12.289	60.000
2	6.210	13.402	3.960	29.92	2.740	1,270.67	1.208.07	2,740.00	25.000	4,118.22	25.000
3	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
4	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
5	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
6	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
7	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
8	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
9	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
10	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
11	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
12	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
13	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
14	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
15	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
16	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
17	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
18	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
19	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
20	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
21	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
22	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
23	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
24	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
25	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
26	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
27	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
28	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
29	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
30	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
31	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
32	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
33	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
34	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
35	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
36	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
37	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
38	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
39	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
40	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
41	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
42	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
43	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
44	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
45	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
46	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
47	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
48	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
49	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
50	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
51	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
52	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
53	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
54	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
55	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
56	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
57	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
58	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
59	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
60	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
61	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
62	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
63	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
64	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
65	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
66	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
67	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
68	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
69	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
70	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
71	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
72	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
73	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
74	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
75	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
76	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
77	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
78	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
79	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
80	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
81	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
82	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
83	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
84	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
85	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
86	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
87	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
88	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
89	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
90	6.310	13.402	3.960	29.92	2.740	1,270.67	1,208.07	2,740.00	25.000	4,118.22	25.000
91											

## STATEMENT XXXIX.

## RAILWAY ADJUSTMENTS.

**2294.** Adjustments under railway policies contain few if any points differing from adjustments upon similar property, whether buildings, bridges, machinery supplies, etc., etc. belonging to individuals, under similar circumstances of loss.

The terms of the modern railway policies reserve the right to replace buildings and bridges without waiting for the action of the underwriters. In such cases the cost of replacing is usually a matter of estimate, as it may be that other kinds of buildings or bridges will replace those burned.

Much will depend upon the terms of the policy, as to the subject covered, especially when it is in the general form. The proper construction in such case will be left to the judgment and experience of the adjuster.

Under the more modern forms of such insurance the policies are made quite specific, so that an adjustment of loss under them becomes an easy matter, as compared with a floater.

**2295.** The following settlement of a loss upon *buildings* under a railway policy embraces some very valuable suggestions upon this class of adjustments under similar contingencies, under other policies. The policy was of the *blanket* kind—rate 15 per cent.—which had the misfortune, as to the underwriters, of becoming specific in its whole amount in any one place where a fire may chance to occur under its protection.

## EXAMPLE.

**2296.** The insurance was for \$50,000, on the property belonging to the *Michigan Central Railway Company*, and on any property for which they may be liable except as common carriers; it matters not of what the property may consist, nor where it may be, provided the property is on the premises owned or occupied by the *Michigan Central Railroad Company*, and situated on the line of their road or of any branch road now operated by them. No claim to be made for loss at any one fire unless the loss exceed the sum of five hundred dollars. The policy not to be liable for loss occasioned by collision or by breaking down of cars or locomotives. *Liberty to*

*alter or repair any premises hereby insured, as the interest of the assured may require. Liberty for other insurance, whether contemporaneous or future.*

**2297.** The loss was upon depot buildings, etc., at one of the stations of the road, amounting to \$3,210.30, the estimates for which were as follows:—

## WOOD-SHED.

(Size  $31\frac{1}{2}$  x 180 feet, and 16 feet high.)

16,840 feet of lumber, all kinds,	@ \$20 per M.....	\$336 80
400 lbs. nails,	@ \$7 per c.....	28 00
60 days' labor,	@ \$3 per day.....	180 00
		<hr/>
		\$544 80

## WATER-HOUSE.

(Size 16 x 26 feet, and 17 feet posts.)

12,500 feet of lumber, all kinds,	@ \$20 per M.....	\$250 00
350 lbs. nails,	@ \$7 per c.....	24 50
158½ days' labor,	@ \$3 per day.....	475 00
2 large water-tanks inside,	@ \$60 each.....	120 00
1 large stove and pipe.....		25 00
		<hr/>
		\$894 50

## BARN.

(Size 14 x 18 feet, and 12 feet posts.)

4,750 feet of lumber, all kinds,	@ \$20 per M.....	\$95 00
200 lbs. nails,	@ \$7 per c.....	14 00
4 M. shingles,	@ \$5 per M.....	20 00
41½ days' labor,	@ \$3 per day.....	125 00
2 doors, trimmings, and frames,	@ \$5 each.....	10 00
2 windows complete,	@ \$5 each.....	10 00
		<hr/>
		\$274 00

## CONTENTS OF BARN.

½ ton of hay, @ \$14 per ton .....	\$7 00
1 harness.....	20 00
1 rubble-car.....	30 00
	<hr/>
	\$57 00

## WOOD.

350 cords sawed wood (by actual measurement) burned in "Wood shed," @ \$4.....	\$1,440 00
--	------------

The liability of each \$1,000 of insurance was \$642.06.

## STATEMENT XI.

## MIXED POLICIES.

**2298.** The following is an actual adjustment of loss upon a manufacturing establishment, under *thirteen* policies, covering *nine* different subjects, partly specific and concurrent, partly general and non-concurrent, and wholly *mixed*.

The loss was total on some of the subjects, and partial on others, which, with the exceedingly *mixed* nature of the policies and the appraisalment, made it a nice point of adjustment to find the correct apportionment. The process by which the contribution was reached under Rule VIII. (**2356**) is given in detail. It is chiefly to exhibit the fallacies attending the general application of this *rule* to adjustments of this character, that this example has been reproduced here, *in extenso*. A corrected adjustment, occupying but a limited space, will be appended (**2309**).

## RECAPITULATION OF POLICIES.

Companies designated by Nos. How covering upon the risk.	Stock and Materials	Engine and Fixed and Movable Machinery	Engine, Shafting, Hangers, Pulleys and Belting.	Machinery, Tools, Implements, and Fixtures.	Tools and Fixtures, Pulleys and Belting.	Water and Cog Wheels.	Building.	Total Insurance in each Company.
	\$	\$	\$	\$	\$	\$	\$	\$
Company No. 1.....		1,000						1,000
" 2.....	500		500	500				1,500
" 3.....	500		500	500				1,500
" 4.....	500		500	500			1,000	2,500
" 5.....	1,000		1,000	1,000				3,000
" 6.....	500		500	500				1,500
" 7.....		1,000					1,000	2,000
" 8.....	750				1,500		1,500	3,750
" 9.....	500				1,000	1,000		2,500
" 10.....	750				1,500			2,250
" 11.....							2,500	2,500
" 12.....							1,500	1,500
" 13.....							1,500	1,500
Totals.....	5,000	2,000	3,000	3,000	4,000	1,000	9,000	27,000

**2200.** The loss, as ascertained and reported by the appraisers, was in the following form and amounts :—

## LOSS.

Engine.....	\$2,000 00	Machinery.....	\$5,328 14
Pulleys.....	200 00	Stock and Materials....	3,245 00
Belting.....	951 00	Building .....	7,146 00
Shafting and hangers.....	400 00	Water and cog wheels...	1,400 00
Tools and Fixtures.....	1,957 59		
		Total.....	\$22,627 73

## APPORTIONMENT.

**2300.** Companies numbered *one* and *seven* cover conjointly to the amount of \$2,000, upon subjects the loss upon which is \$7,928.14, which gives the insurance as 25.227 per cent. of the loss :—

Subjects.	Loss.	Insurance.
On engine.....	\$2,000.00 @ 25.227 per cent.	\$504.54
" machinery.....	5,328.14 " " "	1,344.10
" pulleys.....	200.00 " " "	50.45
" shafting and hangers	400.00 " " "	100.91
Total loss....\$7,928.14		Total insurance.....\$2,000.00

These amounts give the insurance, *jointly*, and upon each item; divided *pro rata*, the liability of each is ascertained.

**2301.** Companies numbered *two*, *three*, *four*, *five* and *six*, cover in like manner \$3,000, upon subjects the loss on which is \$3,551.00, which gives the insurance as 84.485 per cent. of the loss :—

Subjects.	Loss.	Insurance.
On engine.....	\$2,000.00 @ 84.485 per cent.	\$1,689.66
" belting.....	951.00 " " "	803.43
" pulleys.....	200.00 " " "	168.97
" shafting and hangers	400.00 " " "	337.94
Total loss....\$3,551.00		Total insurance.....\$3,000.00

Being the respective amounts of insurance by these companies upon each item.

of loss upon a  
olicies, covering  
current, partly  
  
and partial on  
e of the policies  
stment to find  
h the contribu-  
given in detail.  
general appli-  
acter, that this  
. A corrected  
d be appended

Wheels.	Building.	Total Insurance in each Company.
	\$	\$
.....	1,000	1,000
.....	1,500	1,500
.....	1,500	1,500
1,000	2,500	3,000
.....	3,000	1,500
.....	1,500	2,000
1,000	2,000	3,750
1,500	3,750	2,500
.....	2,500	2,250
.....	2,250	2,500
.....	2,500	1,500
.....	1,500	1,500
.....	1,500	1,500
00	9,000	27,000

**2302.** These last named companies cover also \$3,000 on other subjects, the loss on which is \$7,285.73, which gives the insurance as 41.174 per cent. of the loss:—

Subjects.	Loss.		Insurance.
On machinery.....	\$5,328.14	@ 41.174 per cent.	\$2,193.81
“ tools and fixtures..	1,957.59	“ “	806.19
Total loss.....		\$7,285.73	Total insurance..... \$3,000.00

Being the respective insurances by these companies on these subjects, in addition to those before named. A *pro rata* division will give the liability of each one.

**2303.** Companies numbered *eight, nine, and ten*, cover in like manner, \$4,000, on subjects the loss on which is \$3,108.59, which gives the insurance as 128.658 per cent. of the loss:—

Subjects.	Loss.		Insurance.
On pulleys.....	\$ 200.00	@ 128.658 per cent.	\$ 257.00
“ belting.....	951.00	“ “ “	1,223.00
“ tools and fixtures.	1,957.59	“ “ “	2,520.00
Total loss.....		\$3,108.59	Total insurance..... \$4,000.00

Being the insurances by these companies upon each item ; a *pro rata* division gives the liability of each.

**2304.** Companies numbered *four, seven, eight, eleven, twelve and thirteen*, cover specifically upon building to the amount of \$9,000, the loss on which is \$7,146, which gives the insurance as 125.943 per cent. of the loss ; a *pro rata* division among the insurers gives the liability of each.

Companies numbered *two, three, four, five, six, eight, nine, and ten*, cover stock concurrently \$5,000, the loss on which is \$3,245, which gives the insurance as 154.083 per cent. of the loss ; by a *pro rata* division of which the separate liabilities can be computed.

Company number *nine* covers specifically upon the wheel to the amount of \$1,000, on which the loss is \$1,400, or total,

**2305.** Having thus arrived at the amount covered by the several companies upon each subject, and knowing the loss upon each subject, the ratio of contribution is readily found. The following TABULAR STATEMENT will present at one view the several insurances and the loss, in gross and upon each subject, with the apportionments and contribution to the loss, both concurrently and for the excess on machinery, by each company.

Comp's. No.	ENGINE.		PULLEYS.		BELTING.		SHAFT AND HANGERS.		TOOLS AND FIXTURES.	
	Insures	Pays.	Insures	Pays.	Insures	Pays.	Insures	Pays.	Insures	Pays.
1	252 27	231 10	25 22	10 54	.....	.....	50 46	45 77	.....	.....
2	281 61	256 30	28 17	11 83	133 90	62 88	50 33	51 41	134 36	79 06
3	281 61	256 30	28 16	11 83	133 90	62 88	50 32	51 41	134 37	79 05
4	281 61	256 30	28 16	11 83	133 91	62 88	50 33	51 41	134 36	79 06
5	563 22	512 00	56 33	23 66	267 81	125 74	112 64	102 82	268 73	158 11
6	281 61	256 30	28 16	11 83	133 90	62 88	50 32	51 41	134 37	79 05
7	252 27	231 10	25 23	10 54	.....	.....	50 45	45 77	.....	.....
8	.....	.....	96 37	40 53	458 63	215 15	.....	.....	.....	.....
9	.....	.....	64 25	26 00	305 75	143 43	.....	.....	945 00	576 22
10	.....	.....	96 37	40 45	458 63	215 15	.....	.....	930 00	570 82
11	.....	.....	.....	.....	.....	.....	.....	.....	945 00	556 22
12	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
13	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pay.	.....	2,030 00	.....	200 00	.....	351 00	.....	400 00	.....	1,957 59
Insured.	2,194 20	.....	476 42	.....	2,026 43	.....	438 85	.....	3,226 19	.....

Co's. No.	MACHINERY.			STOCK.		BUILDING.		WHEEL	TOTALS.	
	Insures	Pays.	Pays.	Insures	Pays.	Insures	Pays.	Insures and Pays.	Insures	Pays.
1	672 05	672 05	40 54	.....	.....	.....	.....	.....	.....	.....
2	365 63	365 63	55 31	500 00	324 50	.....	.....	.....	1,000	1,000 00
3	365 63	365 63	55 31	500 00	324 50	.....	.....	.....	1,500	1,206 92
4	365 63	365 63	55 31	500 00	324 50	1,000 00	794	.....	2,500	1,206 92
5	731 27	731 27	110 62	1,000 00	649 00	.....	.....	.....	3,000	2,413 82
6	365 63	365 63	55 31	500 00	324 50	.....	.....	.....	1,500	1,206 92
7	672 05	672 05	40 54	.....	.....	.....	.....	.....	2,000	1,794 00
8	.....	.....	.....	750 00	486 75	1,500 00	794	.....	3,750	2,489 66
9	.....	.....	.....	500 00	324 50	.....	.....	1,000 00	2,500	1,985 71
10	.....	.....	.....	750 00	486 75	.....	.....	.....	2,250	1,298 57
11	.....	.....	.....	.....	.....	2,500 00	1,985	.....	2,500	1,985 00
12	.....	.....	.....	.....	.....	1,500 00	1,191	.....	1,500	1,191 00
13	.....	.....	.....	.....	.....	1,500 00	1,191	.....	1,500	1,191 00
Pay	.....	3,537 91	412 94	.....	8,245 00	.....	7,146	1,000 00	.....	20,850 44
Ins.	3,537 91	.....	.....	5,000 00	.....	9,000 00	.....	1,000 00	27,000	.....

## RECAPITULATION.

Total amount of insurance	\$27,000 00
Total amount of loss, 83.80 per cent. of insurance, equals	\$22,627 73
Total payment of loss, 77.224 per cent.	20,550 44
Excess of loss	\$ 1,777 29

Excess of loss over payments.....	\$1,777 29
Made up as follows: Excess on machinery.....	\$1,377 29
"    " water-wheel.....	400 00 1,777 29

Gross salvage, 22.776 per cent. of insurance, equals \$6,149 58

**2306.** From this statement it appears that *machinery* was covered only to the amount of \$3,587.91, plus unexhausted insurance in companies 1 to 7 subsequently added, \$412.94. Under the rule requiring compound policies to contribute to their full liability upon any one subject under their protection, policies *one to seven, inclusive, covered machinery* as one of their subjects, to the amount of \$5,000; hence that amount must be appropriated to *machinery*, though policies *one and seven* are exhausted thereby. This will show that the operation of RULE VIII., even with unexhausted insurance or the amount of \$412.94 added, still failed to furnish indemnity by the amount \$1,639.15.

**2307.** Companies numbered *one* and *seven* cover *machinery* \$2,000, and with the others, \$1,918.82, leaving a balance unexhausted of \$81.08 to be applied on the excess of loss on *machinery*, beyond *pro rata* contribution, or \$40.54 each.

**2:308.** Companies numbered *two, three, four, five* and *six*, cover machinery and tools \$3,000, and pay *pro rata* with the others, on *tools* \$474.33, and on *machinery* \$2,193.81, leaving an unexhausted balance of \$331.86 beyond contribution to be applied, *pro rata*, upon the loss on *machinery* in excess of *pro rata* contribution

## CORRECTED APPORTIONMENT.

**2309.** The following corrected apportionment of this Example, under the Rule for compound policies, exhibits the *contributive liability* of each policy upon each of the several subjects at one view.

## APPORTIONMENT OF INSURANCES.

WITH LOSS PER CENTAGES.

Cos.	Machinery.	Engine.	Palleys.	Belt'g.	Shaft'g.	Tools and Fixtures.	Stock.	Build'g Wheel.
No	\$	\$	\$	\$	\$	\$	\$	\$
1	1,000 00							
2	500 00	500			500	500 00	500	
3	500 00	500	500	500	500	500 00	500	
4	500 00	500	500	500	500	500 00	500	
5	1,000 00	1,000	1,000	1,000	1,000	1,000 00	1,000	1,000
6	500 00	500	500	500	500	500 00	500	
7	1,000 00							
8			1,500	1,500		1,500 00	750	1,500
9			1,000	1,000		1,000 00	500	
10			1,500	1,500		1,500 00	750	1,000
11								2,500
12								1,500
13								1,500
Ins...	5,000 00	3,000	7,000	7,000	3,000	7,000 00	5,000	9,000
Loss	5,328 14	2,000	200	951	400	1,957 19	3,245	7,146
Pr.ct.	100 00	66 2/3	2.857	18.596	1.33 1/3	27.960	64.90	79.40

**2310.** It will be noticed that companies Nos. 1 and 7 were liable to assessment upon *engine*; but the *ratable* proportions of these policies having been exhausted upon *machinery*, they had nothing to contribute upon *engine*.

Had they been assessed with other co-insurers upon *engine*, a re-assessment would have been necessary which would have produced the same final result as above; and as the loss upon *machinery* could not be paid in full without the contribution of companies 1 and 7 to their *full* amounts, they must be thus applied, leaving the loss upon *engine* to be assessed upon the other companies covering thereon.

**2311.** From the foregoing apportionment comes the contribution by multiplying the amount of each policy by the percentage of its liability upon each item (Rule VIII.), producing the following

## FINAL CONTRIBUTION.

Cos.	Ma- chine- ry.	Engine.	Pulleys.	Belt'g.	Shaft'g and Hanging.	Tools and Fix- tures.	Stock.	Build- ing.	Wheel.	Total.
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
1	1,000									1,000 00
2	500	333 33	14 28	67 03	66 66	139 83	324 50			1,446 58
3	500	333 33	14 29	67 63	66 67	139 83	324 50			1,446 55
4	500	333 33	14 28	67 93	66 66	139 83	324 50	794		2,240 54
5	1,000	666 67	28 57	135 86	133 34	279 66	649 00			2,803 10
6	500	333 34	14 29	67 03	66 67	139 83	324 50			1,446 56
7	1,000							794		1,794 00
8			42 86	203 78		419 48	486 75	1,191		2,343 87
9			28 67	135 86		279 65	324 50	1,000		1,768 58
10			42 86	203 78		419 48	486 75			1,132 87
11								1,085		1,085 00
12								1,191		1,191 00
13								1,191		1,191 00
Total	5,000	2,000 00	200 00	351 00	400 00	1,067 59	3,245 00	7,146	1,000	21,899 60

**2312.** By a recapitulation we get the results of this adjustment as compared with the *first* and more extended one.

## RECAPITULATION.

Total insurance.....	\$27,000 00
Total payments.....	21,899 60
Salvage to companies.....	\$5,100 40
Total loss.....	\$22,627 73
“ payment.....	21,899 60
Excess of loss over payment.....	\$728 13
Made up in excess of loss over insurance as follows :-	
On machinery.....	\$328 13
“ wheel.....	400 00
Uninsured total.....	\$728 14

## STATEMENT XLI.

## MIXED POLICIES.

## LOSS UPON A COAL-BREAKER.

**2313.** The following is an abstract of an actual adjustment of loss upon a coal-breaker, where the policies, though in the main specific, were very much *mixed*, and the apportionment was further complicated by the exceedingly mixed manner in which the appraisalment of damage was made.

Nine companies covered various items to the amount of \$22,500, under two sets of policies, as follows:—

Numbers *one, two, three, four* and *five* covered as follows:—

(The marginal letters are for reference to Appraisers' Schedule)

I....	On slope engine-house, and all wood-work connected.....	\$400
A....	" <i>two</i> forty horse-power hoisting-engines, drums, chains, wire rope and all connected machinery.....	700
B....	" <i>six</i> boilers, steam-pipes, and all connections for slope-engine..	100
J....	" breaker-frame, chutes, plane, trestling, engine and boiler-house, and all wood-work connected.....	500
C....	" <i>fifty</i> horse-power breaker-engine, rollers, screens, belts, shafting and all connected machinery.....	700
H....	" <i>three</i> boilers, steam-pipes, and all connections for breaker-engine.....	100
		Each company.....\$2,500
		Five companies—Total.....12,500

**2314.** Companies numbered *six, seven, eight* and *nine*, covered as follows:—

S....	On breaker structure, engine and boiler-house.....	\$1,000
C....	" engine.....	300
E....	" screens.....	150
K....	" plane structure.....	350
D....	" rollers and gearing.....	200
G....	" gearing and machinery.....	350
H....	" boilers and steam-pipe connections.....	70
F....	" belting.....	80
		Each company.....\$2,500
		Four companies—Total.....\$10,000

the contribu-  
y the percent-  
producing the

Child- ing.	Wheel.	To lbs.
\$	\$	\$
...	...	1,000 00
...	...	1,446 58
...	...	1,446 55
794	...	2,240 54
...	...	2,893 10
...	...	1,446 58
794	...	1,794 00
1,191	...	2,343 87
...	1,000	1,708 58
...	...	1,452 87
985	...	1,395 00
1,191	...	1,191 00
1,191	...	1,191 00
146	1,000	21,899 60

of this adjust-  
ed one.

7,000 00  
8,899 60  
5,100 40

\$728 13

\$728 14

## THE APPRAISEMENT OF DAMAGE.

**2315.** As rendered, was as follows—the marginal letters referring to the same items in the several policies, or as nearly as they can be ascertained, no effort having been made to have the order of the appraisement correspond with the arrangement of the subjects in the policies :—

Subjects.	Sound Value.	Damage.
A.... <i>Two</i> forty horse-power hoisting-engines, drums, chains, wire, rope, and all connections.....	\$5,500	\$4,250
B.... <i>Six</i> boilers, steam pipe, and all connections for slope-engine.....	1,600	300
C.... <i>One</i> fifty horse-power engine in breaker.....	18,000	2,500
C, D. Roller and gearing in breaker.....		1,700
C, E. Screens in breaker.....		1,800
C, F. Belting ".....		1,200
C, G. Plane gearing and machinery in old plane.....		4,800
C.... Pulleys and shatting.....		2,200
H.... <i>Three</i> boilers, steam-pipe and all connections for breaker.....	1,200	1,000
I.... Slope engine-house and all wood-work connected.....	4,257	4,026
J.... Breaker-frame, chutes, trestling, engine and boiler-house.....	10,824	8,798
K.... Plane structure.....		1,663
Total damage.....		\$34,237

**2316.** The apportionment of the insurance upon each of the subjects does not appear, but the final apportionment of the loss among the several companies was so made as to present the following statement of

## CONTRIBUTION TO PAYMENT.

Cos.	A.	B.	C.	D.	E.	F, G.	H.	I.	J.	K.	Totals.
1....	700	60	372 34	228 44	99 22	.....	100	400	286 80	213 20	2,460 00
2....	700	60	372 34	228 44	99 22	.....	100	400	286 79	213 20	2,459 99
3....	700	60	372 34	228 44	99 22	.....	100	400	286 79	213 20	2,459 98
4....	700	60	372 34	228 44	99 22	.....	100	400	286 79	213 20	2,459 99
5....	700	60	372 34	228 44	99 22	.....	100	400	286 79	213 20	2,459 99
6....	.....	.....	159 58	139 45	150 00	430	70	1,000 00	149 25	2,098 28	
7....	.....	.....	159 58	139 45	150 00	430	70	1,000 00	149 25	2,098 28	
8....	.....	.....	159 57	139 45	150 00	430	70	1,000 00	149 25	2,098 27	
9....	.....	.....	159 57	139 45	150 00	430	70	1,000 00	149 25	2,098 27	
Totals	3,500	300	2,500 00	1,700 00	1,998 10	1,702	780	2,000	5,433 96	1,663 00	20,693 00
Loss...	4,250	300	4,700 00	1,700 00	1,800 00	6,000	1,000	4,026	5,798 00	1,663 00	34,237 00

**2317.** From the foregoing statements (as found) we make the following

## RECAPITULATION.

Sound Value. Damage.

\$5,500 \$4,250

1,600 300

2,500

1,700

18,000 1,800

1,200

4,500

2,200

1,200 1,000

4,257 4,026

10,824 8,798

1,663

\$34,237

upon each of

apportionment of

made as to pre-

Items.	Damage.	Insurance.	Payments.	Over pay- ments.	Deficiency.	Salvage.	Loss over insurance.
A.....	\$4,250.	\$3,500	\$3,500 00				
B.....	300	500	300 00				\$750 00
C.....	4,700	4,700	2,500 00			\$200 00	
D.....	1,700	800	1,700 00		\$2,200 00		
E.....	1,800	600	1,096 10	\$900 00			900 00
F.....	1,200	320	1,720 00	490 10			1,200 00
G.....	4,800	1,400	780 00				880 00
H.....	1,000	780	2,000 00				3,400 00
I.....	4,026	2,000	5,433 06				230 00
J.....	8,798	6,500	1,603 00		1,066 94		2,026 00
K.....	1,663	1,400	263 00				2,208 00
				\$1,659 10	\$3,266 34	\$200 00	\$11,937 00
				Deduct.	1,659 10	Deduct..	200 00
Totals.....	\$34,237	\$22,500	\$20,683 06		\$1,606 94		\$11,737 00

**2318.** \*Item C.—*Pulleys and shafting*, appraised damage on which was \$2,200, seems from some cause to have been omitted in the apportionment of the loss entirely, though it may have been included among some of the other items. The object of the criticism being the *rule* by which the apportionment was made, for we are presented with the anomaly of a salvage of \$1,606.94 upon a loss more than *fifty* per cent. in excess of the total insurance. Or, in other words, a payment is made of \$20,683.06, under an insurance of \$22,500, in satisfaction of a loss of \$34,237.00.

We submit, as more in accord with the spirit of the insurance contract, the following table of

**2319.** APPORTIONMENT AND CONTRIBUTION.

	K.	Totals.
80	213 20	2,460 00
79	213 20	2,459 99
79	213 20	2,459 99
79	213 20	2,459 99
79	213 20	2,459 99
00	149 25	2,098 28
00	149 25	2,098 28
00	149 25	2,098 27
00	149 25	2,098 27
96	1,663 00	20,693 06
00	1,663 00	34,237 06

Company.	A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	Total.
1.....	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2.....	700	100	700					100	400	500		2,500
3.....	700	100	700					100	400	500		2,500
4.....	700	100	700					100	400	500		2,500
5.....	700	100	700					100	400	500		2,500
6.....			300	250	150			100	400	500		2,500
7.....			300	200	150	80	350	70		1,000	350	2,500
8.....			300	200	150	80	350	70		1,000	350	2,500
9.....			300	200	150	80	350	70		1,000	350	2,500
Insurance.	3,500	500	4,700	800	600	320	1,400	780	2,000	6,500	1,400	22,500
Loss.....	4,250	300	4,700	1,700	1,800	1,200	4,800	1,000	4,026	8,798	1,663	34,237
Pay.....	3,500	300	4,700	800	600	320	1,400	780	2,000	6,500	1,400	22,500

## LOSS FORMS.

**2320.** The following are the principal *forms* in use in the adjustment of losses. These, or others similar, are furnished by the companies in all cases of *honest* losses. (1607.)

I. NOTICE OF LOSS by agents.....	2321
II. APPRAISERS' BLANKS,.....	2323
" agreement for submission to.....	2326
" declaration of.....	2328
" Schedule A.....	2330
" various forms of,.....	2331
" A, for owner.....	2332
" B, " goods held in trust.....	2333
" C, " " sold but not delivered.....	2334
" D, " whom it may concern.....	2335
" E, " damage by removal.....	2336
" " " owner.....	2337
" " " others.....	2338
III. BUILDERS' ESTIMATES.....	2339
" " extended form of.....	2343
" specifications.....	2344
" form of Home Insurance Company.....	2349
" certificate of responsibility.....	2345
" of damage.....	2347
" of architect.....	2348
IV. PRELIMINARY PROOFS.....	2350
" form, full covenants.....	2352
" " no covenants.....	2354
" " Schedule A.....	2355
" " " B.....	2356
" " actual, in full.....	2357
" " for Railway company.....	2358
" " under re-insurance.....	2367
" " of claim and award.....	2361
" " " award, Form 1.....	2365
" " " " " 2.....	2366
V. RECEIPTS.....	2370
" form for partial loss.....	2373
" " " indorsement on policy.....	2374
" " " total loss.....	2375
" " " cancellation of policy.....	2376
" " " where policy is lost.....	2377
" " " draft and receipt.....	2378
RELEASE.....	2371

**2321. I. NOTICE OF LOSS BY THE AGENT.****(1571.)**

Agency at \_\_\_\_\_

To the \_\_\_\_\_ Insurance Co. \_\_\_\_\_ 18 \_\_\_\_\_

of \_\_\_\_\_

A loss occurred at this Agency on the \_\_\_\_\_ day of  
18 \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Name of insured \_\_\_\_\_

Location (street, town, or village) \_\_\_\_\_

Policy No. \_\_\_\_\_ Amount, \$ \_\_\_\_\_ Expires \_\_\_\_\_ 18 \_\_\_\_\_

Property covered \_\_\_\_\_

Other insurance, concurrent or otherwise (give names and amounts)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Probable amount of loss (total or partial) \_\_\_\_\_

Particulars as far as known : (state all that may be known or suspected  
as to the origin of the fire, with attendant circumstances)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_Notice of loss received from \_\_\_\_\_ the insured, on  
day of \_\_\_\_\_ 18 \_\_\_\_\_  
\_\_\_\_\_ Agent.

**2322.** Always report at once, by telegraph, loss of any considerable amount, invariably giving the number of policy, noting other insurance, and saying whether loss is partial or total; and forward full particulars on one of these blanks by first mail.

**2322.** This form usually covers a sheet of ordinary letter paper, with a proper indorsement on the reverse side, for filing, and is furnished to agents among other office supplies.

EEE

## II. APPRAISERS' BLANKS.

(1808.)

**2323.** These blanks are very important to the underwriter; and being conclusive as to the *measure of damage* sustained by the articles submitted for appraisalment, the insured's claim for damage thereon is limited, within the terms of the policy, to the sum named therein.

**2324. First: SUBMISSION TO APPRAISERS:** This is the agreement of the parties in interest to submit the matter of *damage* to the property, as required by the condition of the policy, to certain parties therein named for estimate and appraisalment. It should be signed by the claimant and for the company by its agent.

**2325.** This agreement has reference *solely to the parties to be selected as appraisers*. It is not an agreement to submit to an appraisalment of damage to the articles, as that is a stipulation of the policy, and a condition precedent to the payment of the claim, when an appraisalment is demanded.

**2326. FORM OF AGREEMENT FOR SUBMISSION TO APPRAISERS.**

IT IS HEREBY AGREED, by \_\_\_\_\_ of the first part, and the \_\_\_\_\_ FIRE INSURANCE COMPANY, of the City of \_\_\_\_\_ of the second part, that \_\_\_\_\_ and \_\_\_\_\_ (together with a third person to be chosen by them, if necessary) shall estimate and appraise, at the true cash value thereof, the damage caused by *fire (water)* to such property belonging to \_\_\_\_\_ as may be specified in the accompanying schedule; which estimate and appraisalment submitted by them, or any two of them, in writing, as to the amount of such damage, shall be binding upon both parties. It is understood that this appointment has no reference to any questions or matters of difference within the terms and conditions of the insurance, and shall be binding on the parties hereto only so far as regards the actual cash value of, or damage to such property, covered by policy No. \_\_\_\_\_ of the agency of said Company, at \_\_\_\_\_ as may have been saved in a damaged condition, and submitted to the above-named appointees for appraisalment.

WITNESS OUR HANDS at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_

(Claimant.)

\_\_\_\_\_  
FIRE INS. CO.,

By \_\_\_\_\_ Agt.

**2327. Second:** APPRAISERS' DECLARATION, *under oath*, that "they will act impartially, and to the best of their skill and judgment, in the appraisement of damage to the articles submitted to them." To be signed by all of the appraisers; to be sworn to before some properly qualified party.

**2328. FORM OF DECLARATION OF APPRAISERS**

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

We, the undersigned appraisers, do solemnly swear that we will act with strict impartiality in making an estimate and appraisement of the actual damage sustained by the property of \_\_\_\_\_ insured by the \_\_\_\_\_ FIRE INSURANCE COMPANY of the City of \_\_\_\_\_ and saved in a damaged condition; and that we will to the best of our knowledge, skill, and judgment, return a true, just and conscientious appraisement and estimate of the damage on the property submitted to us.

WITNESS our hands, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_

Subscribed and sworn before me, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
J. P. (or V. P.)

**2329. Third:** SCHEDULE OR INVENTORY of articles appraised, showing the estimated damage to the articles singly and in the aggregate. To be signed by the appraisers at the close of the inventory. (1783.)

**FORM OF APPRAISERS' SCHEDULE A.**

Schedule of property of \_\_\_\_\_ damaged by fire (water) on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_ at \_\_\_\_\_ the damage on which was assessed by \_\_\_\_\_ and \_\_\_\_\_ appraisers, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_

(This is the customary form; the one below, Form A, is more specific.)

**The damaged property must at once be placed in as good condition as possible by the owner, duly assorted and arranged according to the several kinds, separating the damaged from the sound.**

**2330.** Articles without apparent damage are to be considered uninjured and should not be included in this schedule. If any such should be found therein, the appraisers will enter their cash value *as sound*, in the first column, and enter the same amounts in the second column. This blank must be properly filled out by the *owner, with a list of the damaged articles*, showing the quantity, kind, and quality, but not the value of each, in the order of the insurance, which will thus much facilitate the labors of the appraisers and adjusters. The appraisers will determine the actual cash value of each article as sound, and assess the damage at a *definite sum* per yard, dozen, pound, bushel or gallon, as the case may require, and enter the same in the appropriate columns. Appraisements by percentage, or in the lump, should be the exception, and not the rule.

Goods damaged by *removal* only should be specified separately.

**2331.** Of this *Schedule* there are several *forms* :—

1. Form A, for the owner.
2. Form B, for "goods held in trust or on commission," or "on storage." (1197, 1790.)
3. Form C, for "goods sold but not removed from store." (1205, 1700.)
4. Form D, for property held "on account of whom it may concern." (1233.)
5. Form E, for the property of either of the above-named parties which may be simply "damaged by removal." (1680, 1789.)

The blank form of this *schedule* will be the same for either of the above; the difference will be only in the heading of each. This *ruled blank* is usually furnished by the company.

#### FORM A—FOR THE OWNER.

**2332.** *SCHEDULE* of the property of *Amos White*, of *Scottsville, Illinois*, insured by the *Globe Fire Insurance Company* of *Yarmouth, Ky.*, under policy No. 1,000 (renewal No. —), issued at its agency, at *Jonesville, Ky.*, and damaged by fire on the 23d day of *January*, A. D. 18..., the damage upon which was appraised by *George White, James Black, and John Brown*, sworn appraisers, on the 31st day of *January*, 18..., as follows :—

Quantity	Names of Articles and Marks	ACTUAL CASH VALUE AS SOUND.		Appraised Value.	
		Doz. Yds. Gallons	Aggte.	Doz. Yds. Gallons	Aggte.
22 prs.	Kid Boots, .....	\$3 25	\$71 50	\$2 75	\$60 50
5	Silk Hats, .....	1 00	20 00	2 00	10 00
1	Pilot Cloth Coats, .....	6 50	19 50	3 00	9 00
60 Gall.	Bourbon Whisky, .....	2 00	120 00	2 00	120 00
100 lbs.	Table Butter, .....	30	30 00	10	10 00
26 yds.	Eng. Broadcloth, .....	5 00	100 00	2 50	50 00
		\$361 00		\$259 50	

considered uninjured  
which should be found  
sound, in the first  
instance. This blank  
the damaged articles,  
value of each, in the  
the labors of the  
the actual cash  
a definite sum per  
require, and enter  
percentage, or in

separately.

Form B.—

," or "on storage."

" (1205, 1700.)  
it may concern."

named parties which  
)

the same for either  
heading of each.  
company.

Scottsville, Illinois,  
Carmouth, Ky., under  
, at Jonesville, Ky.,  
18..., the damage  
k, and John Brown.  
which was:—

Appraised Value.

Yds. Goods.	Aggregate
\$2 75	\$60 50
2 00	10 00
5 00	9 00
2 00	120 00
10	10 00
2 50	50 00
	\$259 50

Signed by appraisers at the end, and duly sworn to before a notary or justice of the peace.

The difference between the "aggregate value as sound," and the aggregate appraised value, is the *net* loss. This differs somewhat from the ordinary form, substituting *present value* for the *damage*, and is in accordance with the requirement of the preliminary proofs, which is *present value*.

#### FORM B.

"GOODS HELD IN TRUST," OR "ON COMMISSION,"  
OR "ON STORAGE."

**2333.** *Condition of the policy.*—"In the case of loss on property held in trust or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth, together with their respective interests therein." (1197.)

SCHEDULE of the property of Henry Jones, of New York, held by Amos White, of Scottsville, Illinois, in trust, or on commission (or on storage), which property was insured by the said Amos White, under his policy No. 728, of the *Well-to-do* Insurance Company of Westlake, Oregon, issued at its agency in Scottsville, Illinois, under the usual commission clause, and was damaged by fire on the 23rd day of January, 18..., the damage upon which was assessed by James Smith, Thomas Poe, and Moses Brown, sworn appraisers, on the 31st day of January, 18..., and is as follows:—

The remainder of the *schedule*, as to the form of *ruling*, is the same as FORM A, the items being properly inserted.

#### FORM C.

"GOODS SOLD BUT NOT DELIVERED,"  
OR "NOT REMOVED."

**2334.** *Condition of the policy.*—The same as for FORM B. (1205, 1699.)

SCHEDULE of property sold by Amos White, of Jonesboro, Kentucky, to C. D. Marvin, of Harrisburg, Kentucky, on the 21st day of January, 18..., but not delivered (or removed), which property was duly insured under policy No. 728, etc., etc., the remainder being the same as in FORM B.

#### FORM D.

"FOR ACCOUNT OF WHOM IT MAY CONCERN."

**2335.** *Condition of the policy* is the same as FORM B. (1233.)

SCHEDULE of tobacco held by Tweed, Greeley & Co., of Salt River, Colorado, for and on account of whom it may concern, loss payable to them, which tobacco was insured, etc., etc., as in FORM B.

## FORM E.

## "GOODS DAMAGED BY REMOVAL."

**2336.** *Condition of the policy.*—"Goods damaged by removal must be specified separately." (1680, 1789.)

## I. FOR THE OWNER.

**2337.** SCHEDULE of property of *Amos White*, of *Scottsville, Illinois*, insured by the *Globe Fire Insurance Company of Yarmouth, Kentucky*, under policy No. 1,000, issued at its agency at *Jonesville, Kentucky*, and damaged by removal from his store building, etc., etc.

## 2. FOR THE PROPERTY OF OTHERS.

**2338.** SCHEDULE of the property of....., held by *Amos White*, on commission (or in trust, on storage, sold but not delivered, etc., etc., as in the appropriate preceding forms), and damaged by removal from his store, etc., etc.

## III. BUILDER'S ESTIMATE AND AGREEMENT.

**2339.** This is not a contract proper, but a simple proposition of the builder, that he will, under certain provisions, contract to rebuild or repair the premises indicated, plans of and specifications for which are added, setting forth the items of the estimate; and in evidence of his ability to fulfill the requirements of the contract, should one be made; he gives the certificate of two or more prominent, worthy citizens of his town, vouching for his responsibility. (1717.)

**2340.** Should the proposal be accepted by the company, a regular contract will be executed. Should the bid not be accepted by either the company or the insured, a reasonable compensation should be allowed for the time and labor bestowed upon the plan and specifications. (1839.)

Under the new form of NATIONAL BOARD policy, it is made the duty of the insured to furnish plans and specifications, when called for.

**2341.** This form of blank (or something of similar import), properly filled, and signed by responsible parties, becomes proof conclusive as to the extent of damage or loss to the premises insured. The amount named therein is the limit of the company's liability thereon, within the terms of the policy. In case of a lawsuit, it is a strong point in favor of the company, and one which will be much strengthened by the certificate of two or more fellow-citizens of the builder as to his ability to make good the stipulation of his estimate and agreement.

**2342.** In view of the importance of these forms to the insurer, their production should always be insisted upon as a substantive and integral portions of the proofs.

The *italics* represent the blank spaces in the printed form.

#### **2343. FORM OF BUILDER'S ESTIMATE AND AGREEMENT.**

To.....FIRE INSURANCE COMPANY OF THE CITY OF.....

The undersigned, (a) practical builders, residing at *Brownsville*, in the state of *Pennsylvania*, and well acquainted with the *brick (frame)* building formerly occupied by *Jones, Brown & Smith*, of *Brownsville*, in the state of *Pennsylvania*, as a *store (dwelling)* (*warehouse*), which was *destroyed (damaged)* by *fire (water)* on the [30th] day of *January*, A. D. 18.., hereby agree (s) to contract with the.....FIRE INSURANCE COMPANY of the City of .....or its assigns, for *rebuilding (repairing)* the same within..... after such contract shall have been duly executed, in as good style and finish, and to render the same in like good condition as previous to the fire, and upon same plan as the original building, in accordance with the plans and specifications herewith submitted, for the sum of.....including the right to use in rebuilding such of the materials of the original building as may have been saved from the fire. The money to be considered due and payable to *us (me)* upon the completion and acceptance of the building by the said company, or its assigns, and not before

WITNESS *our (my)* hands and seals at *Brownsville, Pennsylvania*, this [20th] day of *February*, A. D. 18...

In presence of

JOHN DOE,  
RICHARD ROE,

NICHOLAS TIDEOUT  
STUYVESANT GILCHRIST.

### 2344. PLANS AND SPECIFICATIONS REFERRED TO IN THE FOREGOING ESTIMATE AND AGREEMENT.

#### DESCRIPTION OF BUILDING BURNED :

Size on the Ground, Main Building.....  
 " " " Wing or Ell.....  
 Material: Brick or Frame.....  
 Height above the Ground.....  
 Number of Stories: Main Building.....  
 Roof: Tin, Slate, Composition, Shingle.....  
 How finished.....  
 Condition as to Repairs.....  
 Value of Material Saved—Aggregate, \$.....

#### MATERIALS NECESSARY FOR RECONSTRUCTION :

Lumber:.....ft. Timber,.....ft. Siding,.....ft. Flooring,.....ft.  
 Shingles:..... Doors:..... Blinds:.....  
 Mason's Work: Brick.....per M., laid.  
 Plastering:.....sq. yards.....per yard.  
 Painting and Glazing.....  
 Hardware: Locks.....Bolts.....Screws.....  
 Nails.....Butts.....  
 Roofing: Squares Tin,.....Slate,.....Composition,.....  
 Labor:.....

### 2345. CERTIFICATE OF RESPONSIBILITY OF THE CONTRACTORS.

The undersigned, residents of *Brownsville, Pennsylvania*, are well acquainted with the above-named *Nicholas Tidrout and Stuyvesant Gilchrist*, and know *them (him)* to be *(a)* practical and skillful workmen, and amply responsible pecuniarily, for any contracts *they (he)* may undertake.

Witness *our (my)* hands at *Brownsville, Pennsylvania*, this [21st] day of *February*, A. D. 18..

SAMSON JONES.

FABUS LONGWORTHY

2346. Several other and more extended forms of specifications are in use; some of them copyrighted. But the gist of the matter is to be found in the above. Should the agreement be accepted, it can be made as comprehensive as the plans and specifications furnished by the insured may render necessary.

**2347.** Where a simple appraisal of the damages is required of the party, a certificate somewhat in the following form would be satisfactory:--

State of..... }  
County of..... } *ss.*

We, the undersigned practical builders (or architects), residing in .....do solemnly swear that we have impartially, and to the best of our judgment and belief, estimated the actual cash value, as it stood at the time of the commencement of the fire by which it was destroyed (damaged), the .....story.....building, with .....roof, situated .....the property of.....and covered by insurance under Policy No..... (Renewal No.....) of the..... Insurance Company of..... issued at its agency at..... and damaged (or destroyed) by fire on the.....day of.....18.... That neither jointly nor severally have we any interest, directly or indirectly, in the within described premises; nor are we in any manner pecuniarily interested with or related to the insured.

That, after having taken into consideration the age and condition of the building before the fire, and making all proper deductions and allowances for materials saved, and their condition and value, we appraise the damage to be.....dollars (\$.....)

..... } Appraisers.  
..... }

Dated,.....18....

Sworn and subscribed before me, this.....day of.....18....  
.....(J.P. or N.P.)

**2348.** Where the builder who erected the building, or the architect under whose inspection and estimates the building was erected, are at hand, in cases of partial damage only, the following, in use in Chicago, might be satisfactory:--

ARCHITECT'S APPRAISAL.

To the .....Insurance Company of the City of .....State of.....

The undersigned does solemnly swear that he was architect (or builder) of the building No.....It was built A. D. 18....  
Material.....  
Thickness of walls in basement.....  
1st story.....2d story.....  
3d ".....4th ".....

Height of each story:

Size on the ground.....

1st story.....2d story.....

3rd ".....4th ".....

Number of stairways.....

" " roof-ways.....

Original cost.....

and that after having taken into consideration the age and condition of the premises previous to the fire of the.....and making

proper deductions for walls, materials and portions of the building saved,

I appraise the damage to be \$.....

Signed and sworn to before me this.....day of.....A. D. 18.....

**2319.** The following form is in use by a large New York City office :—

#### BUILDER'S ESTIMATE.

State of..... }  
County of..... } ss.

We, the undersigned, do solemnly swear that we are practical builders residing in the.....of.....; that we have acted with strict impartiality in estimating the actual cash value of the.....story.....building, with.....roof, situate.....property of.....and insured under Policy No. ....of the HOME INSURANCE COMPANY OF NEW YORK, issued at the.....Agency, and.....by fire, on the.....day of.....18..., and that *having taken into consideration the age, condition, and all manner of depreciation, by wear and tear of the premises, including cracked and defective walls, old roofs, etc., at the breaking out of said fire, and also the value of the walls, materials, and all portions of the building saved, and made proper deductions therefor,* we have determined the damage to be.....Dollars (\$.....), as per specifications named below and hereto attached.

Subscribed and sworn to before me, this )  
.....day of....., 18.... )

## IV. PRELIMINARY PROOFS.

(1608.)

**2350.** This form of blank is intended to embrace all the requirements of the conditions of the policy relative to a claim for loss; setting forth, in a condensed form, though in general terms only, the facts requisite to substantiate such claim, but relying upon the several "vouchers" and supplementary proofs" therein referred to and "made a part thereof" for the details, as explained under these several heads. (1862, 1870, 1889.)

**2351.** Inasmuch as the *preliminary proofs* are but a recapitulation of the results of the several facts and figures of the "vouchers," it is scarcely necessary to suggest that the blank spaces in the printed form should not be filled until such results have been fully and accurately obtained.

The several companies furnish this form in case of loss under their policies, so that, while uniform in their main particulars, they frequently differ in the mode of arrangement.

Several different forms, in practical use, are herewith presented. The customary blanks are filled in italics.

**2352. FORM OF PRELIMINARY PROOF FOR OWNER.**

(WITH FULL COVENANTS.)

TO THE.....FIRE INSURANCE COMPANY OF.....  
State of *New Hampshire*, } ss.  
County of *Stratford*, }

BE IT KNOWN, that on this 30th day of *January*, A. D. 18, before me, *Thomas Jefferson*, a notary public, legally qualified, and residing in the town of *Morrison*, in the county and state aforesaid, personally appeared *Thomas Macauley*, *Jonas Thompson*, and *William Evans*, composing the firm of *Macauley, Thompson & Co.*, who being first duly sworn, according to law, depose and say: That the.....FIRE INSURANCE COMPANY of the city of.....through its agency at *Morrison*, in the State of *New Hampshire*, did on the 26th day of *April*, A. D. 18, issue to *Macauley, Thompson & Co.* their policy of insurance, No. 67, the written body of which, with its immediate context, is as below specified; said insurance terminating on the 26th day of *April*, 18, at noon:—

No. 67. The..... FIRE INSURANCE COMPANY of the city of....., do hereby insure *Macaulay, Thompson & Co., of Morrison, N.H.*, against loss or damage by fire to the amount of *twenty-five hundred dollars*

(The written portion of the policy to be here given in full, with copies of all endorsements, assignments, or transfers consented to by the company.)

Which said policy was subsequently continued in force by renewal No. 97, until the 26th day of *April*, A. D. 18, at noon.

That, in addition to the amount covered by said policy, there was—other insurance made thereon to the amount of *twenty-five hundred dollars*; as is particularly specified in the accompanying schedule marked A.

(Should there be "other insurance," upon all or any portion of the property embraced in the proofs, it must be so stated in the schedule A, referred to.)

That on the 19th day of *January*, A. D. 18, a fire occurred by which the property so insured was damaged to the amount of *three thousand seven hundred and fifty dollars* actual value, as set forth in the statements and the several schedules and papers hereunto annexed and forming a part of this proof, which these deponents declare to be a just, true and faithful account of the loss and damage thereon, and the circumstances concerning the same, so far as known to them.

That the actual cash value of the property so insured, immediately preceding the fire, was *eight thousand nine hundred and seventy-five 27-100* dollars, as will appear by the annexed schedule, marked B, containing a full and accurate description of all the property so insured.

That the property so insured belonged at the time of the fire, solely to *Macaulay, Thompson & Co., the insured*, and there was no other party interested therein to the amount of anything.

(Should the insurance be, upon the property of others, i. e., held in trust, on commission, on storage, or sold but not delivered, etc., etc., it should be here so stated.)

That, at the time of said fire, the building insured or containing the property so damaged or destroyed, was occupied in its several parts by the parties hereinafter named, and for the following purposes (there being no change in the occupancy of the premises since the insurance was effected), to wit: *first floor by the insured as a grocery store, the second floor by Elias Thomas, James Gray, and Elbridge Knight, as lawyers' offices*, and for no other purposes whatever.

(Should there have been any change of occupancy since the policy was taken out such change should be fully noted.)

That the fire originated *from causes unknown, in an adjoining building*.

(If the cause be known, or suspected, it should be stated, as the condition of the policy requires full information, upon this material point, from the insured.)

And the said deponents further declare: That the said fire did not originate by any act, design, or procurement on *their part*, nor on the part of any one having any interest in the said *policies* of insurance; nor in consequence of any fraud or evil practice done or suffered by *them*, and that nothing has been done by or with *their* privity or consent to render void the *policies* aforesaid; and that *they* will furnish such additional information concerning said insured property, the damage thereto, and the insurance thereon, as shall be required by said company.

And the insured claim of the ..... FIRE INSURANCE COMPANY, by reason of said loss and damage, and their policy of insurance, the sum of *eighteen hundred and seventy-five* dollars, as is more fully set forth in the annexed schedule marked *B*.

IN TESTIMONY WHEREOF, the said deponents have hereunto set *their* hands and seals, the day and year first hereinbefore mentioned

MACAULEY, THOMPSON & Co., { SEAL }  
By THOMAS MACAULEY

Subscribed and sworn before me, this }  
30th day of January, 18. }

THOMAS JEFFERSON, Notary Public.

MAGISTRATE'S CERTIFICATE.

**2353.** The usual form of this certificate is as follows, the customary blanks being filled in *italics* (1914):—

State of *New York*. }  
County of *Orleans*. } ss.

I, *Thomas Jefferson*, a *magistrate* (or *notary public*), residing in *Madison*, most contiguous to the property herein<sup>1</sup> afore described, hereby certify that I am not concerned in the loss or claim above set forth, either as creditor or otherwise, or related to the insured or sufferers; that I have examined the circumstances attending the fire and damage as alleged, and that I am well acquainted with the character and circumstances of the insured, and do verily believe that *they* have by misfortune, and without fraud or evil practice, sustained by the said described fire loss and damage on the property insured to the amount of *eighteen hundred and seventy-five* dollars, the sum stated in the foregoing affidavit of loss (or such other sum as the magistrate may deem correct).

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal, this 30th day of *January*, A. D. 18.

{ SEAL }

THOMAS JEFFERSON,  
*Justice of the Peace.*

## 2354. A SIMPLE FORM OF PRELIMINARY PROOF.

(WITHOUT SPECIAL COVENANTS.)

To the ..... Insurance Company of.....

By your policy of insurance issued to..... at your agency at  
 ....., State of..... (and continued by renewal  
 No..... to the..... th day of..... 18..), a part of  
 which is in the following words and figures:—

No..... Dated....., 18..

Against loss and damage by fire to the amount of..... dollars

(Here follow the exact words of the written portion of the policy.)

There was other insurance on the property as follows:—

(Here give the amount of other insurance, if any, on each item of property. If more  
 than one, name of the company, when concurrent; if not concurrent, the written part  
 of each policy must be copied in full. See schedule A.)

A fire occurred on the..... day of..... 18.., by which  
 loss and damage was sustained by the property covered as set forth in detail,  
 and which was the actual cash value at the time of the fire, see schedule  
 B, hereto attached, to the amount of..... dollars

And..... claim of your company..... dollars.

The whole value of the property, at the time of the fire, was.....  
 ..... dollars, as set forth in schedule B, hereto attached.

The property belonged to....., and no other party or  
 person had any interest therein.

There was no other insurance than hereinbefore set forth; nor was  
 there any change in the occupancy of the premises since the insurance was  
 effected, except as hereinafter stated:—.....

The fire originated.....

Any other information that may be required will be furnished on call.

WITNESS..... hand..... at..... this..... day of....., 18..

PERSONALLY appeared....., who is known to me to be the  
 signer of the foregoing statement, and made oath to the truth of the same  
 this..... day of....., 18..

{  
 SEAL  
 }

Before me,

..... J. P.

## 2355. SCHEDULE A.

## ADDITIONAL INSURANCE.

Referred to in the foregoing preliminary proofs, giving the name of each company, date and expiration of policy, rate of premium, and the written portion of each policy, with all indorsements, assignments, transfers, or renewals thereon. (Printed forms of this blank are usually furnished by the companies.)

2356. When all policies are exactly concurrent, the written portions of but one need be given; the words "*concurrent with the above*" will suffice for the others. If not exactly concurrent, however, each differing one must be given in full.

## 2357. SCHEDULE B.

(1606, 1615.)

Is the statement given in the preliminary proofs, similar to the several Statements I. to XLI., showing the contribution of each company, and how the same was determined.

## 2358. FORM OF RAILROAD PROOF.

To the.....Insurance Company.

Of.....

BE IT KNOWN that I....., Treasurer (or other duly authorized officer) of..... Railroad Company, do hereby depose and say, that a fire occurred on the line of said railroad, on the date and at the locality named in the schedule hereto attached, marked C, by which property belonging to said railroad company was damaged (or destroyed) to the amount of..... dollars in value, or more, as per schedule hereto attached, marked B.

And I further depose and say, that said fire did not originate from any design or procurement on the part of said..... Railroad Company. AND that at the time the aforesaid fire occurred the said..... Railroad Company was insured against loss or damage by such peril in the sum of.....dollars, by the insurance companies, and in the several sums stated in the schedule hereto annexed, marked A, and that there was no other insurance subsisting upon said property at the time of the occurrence of said fire.

The said..... Railroad Company do hereby claim of the said Insurance Companies their several pro rata proportions of the said sum of..... dollars, as per schedule annexed, marked....., the proportion of the..... Company being.....dollars.

Dated at....., this..... day of..... 18

Signed, ..... Treasurer.

State of..... } ss.  
 County of..... }

Personally appeared before me, the above described..... known to me to be the Treasurer of the..... Railroad Company, and made oath that the foregoing statement, as made by him, is true and correct, according to the best of his knowledge and belief.

{  
 SEAL.  
 }

..... N.P (or J.P.)

#### AWARD BY THE ADJUSTER.

**2359.** THIS WILL CERTIFY that I have made careful investigation into the circumstances attending the fire which occurred on the line of the ..... Railroad Company, as set forth in the foregoing claim and in the schedules thereto annexed, marked respectively A, B, C and believe that the said..... Railway Company did sustain loss and damage to the amount of.....dollars in consequence of said fire, and recommend the payment by the..... Insurance Company of the sum of.....dollars, being its ratable proportion of said loss, as set forth in schedule marked....annexed.

..... Adjuster.

Dated at.....this.....day of.....18..

It is customary, under railroad policies, to omit the magistrate's certificate, as not relevant to the occasion.

**2360.** The several schedules referred to in the proofs as A, B, and C, are the same as in ordinary proofs.

Schedule A contains list of other insurance.

" B is the statement of the loss, with vouchers.

" C gives the name of the place where the fire occurred, and such particulars of the loss as may be known.

Proofs of this kind, where there are so many companies interested, are usually printed, and served upon the insured in that form.

#### CLAIM AND AWARD.

**2361.** Where the amounts are small, less than *one hundred* dollars, it is customary to dispense with *full proofs*, and pay upon an award made by the adjuster. A variety of forms are in use for this purpose, some embracing a *claim* of the insured and an *award* of the adjuster, and others being simply the award, reciting the circumstances of the claim. Both classes of forms are here given:—

## 2362. FORM OF CLAIM AND AWARD.

## CLAIM.

 This form is not to be used when the claim exceeds \$100

..... FIRE INSURANCE COMPANY  
OF THE CITY OF.....

THIS WILL CERTIFY *that I am* insured by the..... Fire Insurance Company of the City of....., in the sum of \$2,500, under their policy No. 67 (renewal No. 109), issued by *Henry K. Smith*, agent at *Rossville, Ind.*, and expiring on the 20th day of *May, 18* . There was other concurrent insurance on the property to the amount of \$5,000, as per schedule herewith.

THAT I have sustained loss and damage under the said policies to the amount of \$270 by fire, which occurred on the 6th day of *December, 18* . and originated from *a defective flue, as is supposed*.

THAT I claim of the..... Fire Insurance Company the sum of \$90, as its proportion of said loss.

\$30 00 on *Building*.

\$60 00 on *Machinery*

REMBRANDT WILKINS, Claimant.

Dated at *Rossville, Ind.*, this 10th day of *December, 18* .

## 2363. AWARD.

TO THE..... FIRE INSURANCE COMPANY  
OF THE CITY OF.....

I have made a careful examination of the circumstances attending the above-named loss, and find that *the loss was caused by a defective flue, without fraud or misconduct on the part of the claimant, and recommend the payment of \$90.00, in full satisfaction of all claim against this company.*

HENRY K. SMITH, Agent

Dated at *Rossville, Ind.*, this 12th day of *December, 18* .

[It paid by the agent, a receipt upon ..... slip is sent herewith.]

On the second page is a list of the other insurance, and the amount of each co-insurer .—

..... Co. of....., insures \$5,000—pays \$180.  
..... " " " " "  
..... " " " " "

## 2364. FORM OF RECEIPT.

\$90 00.

Rossville, O., December 12, 18 .

Received of H. K. Smith, agent, a sight draft upon the.....  
Insurance Company of the city of....., for the sum of *ninety* dol-  
lars, which, when paid, will be in full satisfaction of all claim arising for  
loss, as hereinbefore recited under policy No. 67 (renewal No. 109) of said  
company, issued at the Rossville agency.

A duplicate of this receipt having been written and signed upon the policy

(Signed), REMBRANT WILKINS, *Claimant*.

Amount of award... \$90 00

One-half appraiser's fees..... 2 50

Total.....\$92 50

## 2365. AWARD.

FORM 1.

.....FIRE INSURANCE COMPANY OF NEW YORK.

*Memphis Agency, February 10, 18*

Award on claim No.....

WHEREAS, *E. & M. Lery*, of *Memphis*, the assured under policy No.  
470, and renewal receipt No....., issued at this agency of the  
.....Fire Insurance Company, have sustained loss and damage by  
fire which occurred on the *5th* day of *February*, 18 , at *one o'clock P. M.*  
of which *the insured* gave notice at this agency *February 6th*, 18 .

The following is a true copy of the policy:—

*Eight Hundred Dollars*

*on their one-story brick building, occupied as a wall-paper store, situated  
No. 200½ Main street, Memphis, Tennessee*

There was *no* other insurance to the amount of \$.....

The circumstances attending said loss are as follows:—

*The fire originated in the adjoining building, from some cause unknown  
to assured*

Now, this is to make known to said company, that *I* have faithfully  
examined into all the facts and circumstances attending said loss and  
damage, and being satisfied that the claim for indemnity against said loss  
is just and true, and that the said assured is entitled to remuneration, *I*  
have awarded the sum of *One Hundred Dollars* in full for such loss and  
damage; and have paid the same, *by draft at sight upon the company*, as  
per receipt hereto annexed.

Award..... \$100 00

Appraisal fees (one-half)..... 5 00

Total..... \$105 00

....., *Agent*

## AWARD.

FORM 2.

**2366.** This form provides for co-insurances, when necessary.

..... Insurance Company,

Of.....

It IS HEREBY DECLARED that.....insured by the

..... Insurance Company, under policy No.....  
Renewal No.....issued by.....at.....  
covering as follows:—

\$.....on.....

\$.....on.....

\$.....on.....

ha.....sustained loss and damage by fire which occurred on the.....  
day of.....18....and originated as follows:—

There was.....other insurance on the property, and after a careful examination of the damage, we have awarded to the assured the sum of \$.....in full for said loss and damage, as follows:

\$.....on.....

\$.....on.....

\$.....on.....

It is further declared that the foregoing award is just and true, to the best of our judgment, and no more than the assured is justly entitled to receive.

..... Company insures \$.....and pays \$.....

..... Company insures \$.....and pays \$.....

..... Company insures \$.....and pays \$.....

Dated at.....this.....day of.....18.....

..... AGENTS.

\$.....18.....

RECEIVED of the.....Insurance Co. of.....  
through.....agents, the sum of.....dollars in full  
satisfaction of all claims for loss and damage by fire on.....day  
of.....18.....to the property covered under policy No.....  
issued at the.....agency of said company.

A like receipt has been signed on the policy.

..... Claimants,

December 12, 18 .  
ne.....  
the sum of *ninety* dol-  
all claim arising for  
ual No. 109) of said

igned upon the policy  
KINS, *Claimant*.

NEW YORK.

bruary 10, 18

ed under policy No.  
this agency of the  
loss and damage by  
at one o'clock P. M.  
ry 6th, 18

paper store, situated

.....

some cause unknown

at I have faithfully  
ding said loss and  
ity against said loss  
to remuneration, I  
all for such loss and  
on the company, as

\$100 00

5 00

\$105 00

....., Agent

## PRELIMINARY PROOFS.

## UNDER RE-INSURANCE.

**2367.** There is no distinction between insurance and re-insurance policies as to the amount of proof required. The insurer, in seeking his remedy against the re-insurer, is obliged to prove up the character and extent of his loss in the same manner, except the magistrate's certificate (**1047**); and as the insured is entirely dependent upon the original insured for all evidence of loss, the *proofs of loss*, under re-insurance, to be served upon the re-insurer, have been designated by our courts to be "filed" by the original insured with the re-insured (**17 Wendel 359**; **BRONSON, J.**) where the subject is fully discussed. (**1045**.)

Should there be double re-insurance, where the original proofs cannot be served upon all of the re-insurers, duplicate copies of the original proofs, properly certified to, and referring to such original proof as on file in the office of the re-insured, will be necessary, one for each of the re-insuring companies. (**1044-5**.)

**2368.** There is no general form of *proofs under re-insurance* in use among the underwriters of this country. Each office makes its own requirement; some of them require the ordinary form to be filled up even to the magistrate's certificate, which, Judge **BRONSON** says, "is following the letter, while we lose sight of the spirit of the compact." (**1047**.)

**2369.** The following form of certificate, to accompany the *original proofs* (or certified copies thereof when necessary) would seem to meet the case fully, as required by the rulings of our courts.

## FORM OF CERTIFICATE

State of ..... }  
County of ..... }

This will certify that the.....Insurance Company of the city of.....  
did, upon the.....day of....., A. D. 18.., by their policy  
No. 4596, issued at their agency at Chicago, insure.....in the sum of  
.....dollars, for the period of one year, in words as follows:—

(Here give the written portion of the original policy.)

That on the ..... A. D. 18..., the ..... Fire Insurance Company of Boston, Mass., did, by their policy No. 18,692, re-insure the said ..... Insurance Company in the sum of five thousand dollars, for the like period of one year, upon their liability under their said policy No. 4596, in the words following, to wit:—

(Here follows the written portion of the re-insuring policy.)

(Should the sum re-insured be only a portion of the original policy, then insert, after the word dollars, "being the one-third (one-fourth, one-half, as the case may be) part of the risk assumed by the said Insurance Company, under their policy No. 4596, for the period of one year, in words following, etc.")

That on the 9th day of October, A. D. 18..., a loss by fire occurred, by which the property covered by the said policy No. 4596 of the ..... Insurance Company was damaged and burned to the amount of nine thousand three hundred and seventy-nine 32100 dollars (\$9,379.32), as is fully set forth in the affidavit of loss of the original insured, and the accompanying vouchers (true and faithful copies of which, duly certified, are) herewith submitted, marked..... and made a part of this affidavit.

And, whereas the said ..... Insurance Company, by virtue of their policy No. 4596 aforesaid, was damaged and injured to the amount as set forth by the affidavits of the insured, herewith submitted:—

Now, therefore, the ..... Insurance Company aforesaid claims of the ..... Insurance Company, by virtue of their policy of re-insurance No. 18,692, the sum of nine thousand three hundred and seventy-nine 32-100 dollars (\$9,379.32) for damage and injury sustained as is hereinbefore fully made manifest.

Dated New York, this.....18..... *Pres. or Secy.*

Subscribed and sworn before me this....day of..... A. D. 18.....

..... *N. P.*

{ Seal }

The magistrate's certificate is not necessary to this affidavit. (1047.)

## V. RECEIPTS.

(1972.)

**2370. RECEIPT:** Where a valid debt or claim exists for a certain sum of money, a receipt for a less sum, specifying that it is "in full of the debt," or "in full of all demands," will not prevent the owner of the debt collecting the balance.

**2371. RELEASE:** A release for a consideration, or under seal (**125**), is a discharge of a right or claim; it differs from a mere *receipt* in that it is a contract that the party making it discharges the person to whom it is made from the claim or demand referred to and described in such release. (**1973.**)

**2372. ACCORD AND SATISFACTION:** In cases of compromise, where a less amount is paid—and accepted as a compromise—than is claimed as of right, the acknowledgment should express an *accord* and *satisfaction*. (**1976.**)

**2373. FORM OF RECEIPT.**

UPON PAYMENT OF A PARTIAL LOSS.

\$..... Agency at..... 18.....  
 Received of the..... Insurance Company of .....  
 the sum of..... dollars, in full payment and satisfaction for loss  
 and damage by fire, on the..... day of..... 18....., to the  
 property covered by their policy No..... (renewal No.....) of this  
 agency, which said policy is hereby canceled to that amount, leaving the  
 sum of..... dollars now insured, a copy of this receipt being indorsed  
 thereon.

..... Insured.

Amount claimed, \$.....

Interest deducted,.....

Amount paid,..... \$.....

**2374. FORM OF INDORSEMENT**

UPON POLICY FOR PAYMENT OF PARTIAL LOSS

RECEIVED OF..... dollars, in full payment and satis-  
 faction for loss and damage by fire under this policy, on the..... day of  
 ..... 18.....; and the same is hereby canceled to that amount,  
 leaving the sum of..... dollars, now insured.

\$..... (Signed by the assured).....

Dated..... 18.....

**2375. FORM OF RECEIPT.**

FOR PAYMENT OF A TOTAL LOSS AND CANCELLATION OF THE POLICY

\*..... Agency at.....18..

Received of the.....Insurance Company of.....,  
the sum of.....dollars, in full payment and satisfaction for all loss  
and damage by fire on the..... day of....., 18....., to the prop-  
erty covered by their policy No....., (renewal No.....), issued at their  
agency at .....; in consideration of which sum said policy is  
hereby canceled and surrendered to the company.

(Signed by the assured).....

Dated....., 18....

**2376. FORM OF CANCELLATION OF POLICY**

FOR PAYMENT OF TOTAL LOSS.

*(To be written upon the policy.)*

RECEIVED of.....dollars, in full payment and  
satisfaction for total loss by fire, under this policy, on the.....day of  
.....18...., in consideration of which sum this policy is  
hereby canceled and surrendered to the company.

\*..... (Signed by the assured) .....

Dated.....18....

Agent

**2377. FORM OF RECEIPT FOR TOTAL LOSS**

WHERE THE POLICY IS BURNED OR LOST.

RECEIVED of the.....FIRE INSURANCE COMPANY, of the  
City of New York,.....dollars, in full payment and satisfaction  
for loss or damage by fire, on the ..... day of....., 18.....,  
under their policy No.....issued at.....Agency; in consid-  
eration of which sum the said company is hereby forever released and  
discharged from all liability thereunder. And....hereby agree to protect  
and forever defend the said company against all persons or claims what-  
soever on account of said policy, the same having been burned, lost, or  
mislaid, and not assigned or transferred by .....

\*..... (Signed by the assured) .....

Dated....., 18....



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